DARAHMAN IBRAHIM & ORS

v.

MAJLIS MESYUARAT KERAJAAN NEGERI PERLIS & ORS

COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
RAUS SHARIF JCA
ABDUL MALIK ISHAK JCA
[CIVIL APPEAL NO: R-01-98-2005]
9 JUNE 2008

ADMINISTRATIVE LAW: *Exercise of administrative powers - Legitimate expectation - Appellants' participation in agricultural scheme subsequently withdrawn after earlier promised participation given to them by local authority in consideration of resettlement exercise - Whether appellants selected and accepted as participants of agricultural scheme – Whether doctrine of legitimate expectation applicable*

PUBLIC AUTHORITIES: *Local authority - Discretionary power - Legitimate expectation - Appellants' participation in agricultural scheme subsequently withdrawn after earlier promised participation given to them by local authority in consideration of resettlement exercise - Whether appellants were selected and accepted as participants of agricultural scheme - Whether doctrine of legitimate expectation applicable*

The appellants appealed from the High Court's dismissal of their claim to recognise them as participants of an agricultural project ('Felcra Scheme') undertaken by the third respondent ('Felcra') in an area called Lubuk Sireh in the State of Perlis. The appellants claimed that in consideration of them moving to Lubuk Sireh pursuant to a resettlement exercise, the second respondent (the State Government of Perlis) had promised to provide them participation in the Felcra Scheme, amongst others. However, the respondents had reneged on that promise by subsequently terminating them from the said participation.

Held (allowing the appeal)
Per Raus Sharif JCA (Zaleha Zahari JCA concurring with him):

(1) There was overwhelming evidence that the appellants were accepted as participants of the Felcra Scheme – (i) the Felcra report explicitly stated that all those involved in the

A resettlement exercise were considered as participants; (ii) the relevant exhibits tendered clearly showed that the first and second respondents had recognised and accepted the appellants as participants; (iii) the appellants being members of a co-operative society on which Felcra operated at Lubuk
B Sireh showed that they were already participants; (iv) the appellants were actively involved as participants in a committee called the Jawatankuasa Kemajuan Projek Felcra Lubuk Sireh which was set up at a meeting attended by a member of the first respondent; (v) the appellants were amongst the
C participants who attended an orientation programme organised by Felcra; (vi) there was evidence to show that there were written agreements signed between the appellants and Felcra; and (vii) the letters from the cooperative society terminating the appellants' membership proved to show that the
D appellants, before the said termination, were participants. (para 9)

(2) All the villagers that were resettled at Lubuk Sireh were participants of the Felcra Scheme. The first and second
E respondents made the decisions *via* the relevant exhibits recognising and accepting the appellants as participants in the Felcra Scheme. Felcra in turn treated and recognised all of the appellants as participants based on what the first and second respondents officially informed and represented to Felcra.
F (para 10)

(3) On the respondents' submission that the recognition of the appellants as participants in the Felcra Scheme was temporary and not final and subject to interviews, the relevant exhibits showed that the interviews had nothing to do with
G determining or finalising the participants. The interviews were solely to find out from the participants about the size of the land that they were expecting to get and their willingness to repay the development costs and within a shorter period.
H (para 11)

(4) There was no evidence that Felcra was under the "wrong assumption" that the appellants were participants of the Felcra Scheme. Felcra at all times acted purely on the instructions and directions of the first and second respondents and as
I Felcra did not plead the "wrong assumption" in its statement of defence, it must be precluded from raising it as a defence. (paras 14 & 15)

Per Abdul Malik Ishak JCA:

(1) The appellants lost their source of income when they were displaced from their original villages. It was in evidence that at the resettlement area the appellants' source of income would be dependent on the agricultural estate developed by Felcra. (paras 36 & 39)

(2) There was overwhelming evidence that all the appellants have already been accepted as participants in the Felcra Scheme. There was documentary evidence to show that the appellants were members of a co-operative society set up by Felcra to operate at Lubuk Sireh. The appellants too had already received payments of profits/dividends under the Felcra Scheme. Further, the letter terminating the appellants' membership from the Felcra co-operative society, by necessary implication, stated that the appellants were participants of the Felcra Scheme before their termination. (paras 54, 95, 104 & 106)

(3) At all times the appellants were already accepted, recognised and treated as participants of the Felcra Scheme. Evidently, all the families that were re-settled at Lubuk Sireh were participants of the Felcra Scheme. In fact, Felcra treated, accepted and recognised all the appellants as participants based on what the first and the second respondents had officially informed and/or represented to Felcra. (para 107)

(4) There was no available evidence to show that Felcra actually acted on wrong assumptions. At all times, Felcra acted purely on the instructions and directions of the first and second respondents. Further, the first and second respondents did not adduce any evidence to show that their earlier decisions and/or actions were temporary and not final and were subject to interviews. (paras 110 & 112)

(5) The appellants relied on the representations and promises by the second respondent and re-settled at Lubuk Sireh. For 13 long years, the appellants were recognised, accepted and enjoyed the benefits of being the participants of the Felcra Scheme. The second respondent could not plead ignorance. The evidence showed that the second respondent knew that the appellants were already participants of the Felcra Scheme. Both Felcra and the second respondent were active partners

of the Felcra scheme. The second respondent acted through Felcra. The second respondent too had given one of the appellants a prestigious award known as the "Peneroka Jaya (Felcra)". (para 124)

(6) The second respondent's decision was totally irrational and could not be justified nor accepted. It was a display of irrationality and arbitrariness at its best. The appellants too were not accorded a right of hearing before the first respondent decided to terminate their Felcra co-operative society membership notwithstanding the fact that the appellants were all along recognised, accepted and treated as Felcra Scheme participants. (paras 125 & 132)

(7) No matter how wide the powers of the second respondent might be and how extensive the discretion that it had, it was prudent to require it to exercise its wide-ranging powers in a manner that was procedurally fair. As governmental powers grow in leap and bounds, there is an urgent need to apply a certain measure of procedural fairness so that it will be tolerable. A violation of natural justice makes the decision void. The non-observance of the rules of natural justice would invalidate the exercise of the power. (paras 133 & 137)

(8) There was considerable justification to invoke the doctrine of legitimate expectation. The appellants did not assume that they were accepted as participants of the Felcra Scheme. The evidence showed that all those people (including the appellants) who were re-settled at Lubuk Sireh were recognised as participants of the Felcra Scheme. (para 140)

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu merayu terhadap keputusan Mahkamah Tinggi kerana menolak tuntutan mereka untuk diiktiraf sebagai peserta dalam satu projek pertanian ('Rancangan Felcra') yang dimajukan oleh responden ketiga ('Felcra') di penempatan yang dipanggil Lubuk Sireh di Negeri Perlis. Perayu-perayu mendakwa bahawa sebagai balasan kepada pemindahan mereka ke Lubuk Sireh di bawah rancangan penempatan semula, responden kedua (Kerajaan Negeri Perlis) telah berjanji antara lain untuk membenarkan mereka menyertai Rancangan Felcra. Responden-responden bagaimanapun memungkiri janji itu apabila menamatkan penyertaan perayu-perayu di dalam rancangan tersebut.

Diputuskan (membenarkan rayuan)
Oleh Raus Sharif HMR (Zaleha Zahari menyetujui):

(1) Terdapat keterangan kukuh bahawa perayu-perayu telah diterima sebagai peserta Rancangan Felcra: (i) Laporan Felcra menyatakan dengan jelas bahawa semua mereka yang terlibat dengan penempatan semula dianggap sebagai peserta; (ii) eksibit-eksibit relevan yang dikemukakan menunjukkan dengan jelas bahawa responden-responden pertama dan kedua telah mengiktiraf dan menerima perayu-perayu sebagai peserta; (iii) perayu-perayu adalah ahli koperasi Felcra di Lubuk Sireh dan ini menunjukkan mereka sudah menjadi peserta; (iv) perayu-perayu bergerak aktif dalam komiti yang dipanggil Jawatankuasa Kemajuan Projek Felcra Lubuk Sireh yang ditubuhkan dalam satu mesyuarat yang dihadiri oleh salah seorang pegawai responden pertama; (v) perayu-perayu adalah antara peserta-peserta yang menghadiri program orientasi yang dikendalikan oleh Felcra; (vi) terdapat keterangan yang menunjukkan bahawa wujud perjanjian bertulis yang ditandatangani di antara perayu-perayu dan Felcra; dan (vii) surat-surat dari koperasi yang menamatkan keahlian perayu-perayu adalah bukti bahawa perayu-perayu, sebelum penamatan itu, adalah peserta-peserta.

(2) Kesemua penduduk kampong yang dipindahkan ke Lubuk Sireh adalah peserta Rancangan Felcra. Melalui beberapa eksibit relevan, responden-responden pertama dan kedua telah membuat keputusan untuk mengiktiraf dan menerima perayu-perayu sebagai peserta Rancangan Felcra. Felcra pula mengiktiraf dan melayani semua perayu-perayu sebagai peserta berdasarkan apa yang dinyatakan dengan rasminya oleh responden-responden pertama dan kedua kepada Felcra.

(3) Berhubung hujah responden-responden bahawa pengiktirafan perayu-perayu sebagai peserta di Rancangan Felcra adalah sementara dan bukannya muktamad dan tertakluk kepada temuduga, eksibit-eksibit relevan menunjukkan bahawa temuduga tiada kena mengena dengan penentuan atau penyeneraian akhir peserta-peserta. Temuduga hanyalah untuk menentukan keluasan tanah yang dijangka diperolehi oleh peserta-peserta dan kesediaan mereka untuk membayar kos pembangunan dalam tempoh yang lebih pendek.

A **(4)** Tiada bukti bahawa Felcra berada di bawah "andaian salah" bahawa perayu-perayu adalah peserta-peserta di Rancangan Felcra. Pada semua waktu, Felcra bertindak semata-mata atas perintah dan arahan responden-responden pertama dan kedua, dan oleh kerana Felcra tidak memplid "andaian salah" dalam
B pernyataan pembelaannya, maka ia tidak boleh dibangkitkan sebagai satu pembelaan.

Oleh Abdul Malik Ishak HMR:

C **(1)** Perayu-perayu telah kehilangan mata pencarian apabila dipindahkan dari kampong-kampong tradisional mereka. Wujud bukti bahawa di penempatan baru sumber pendapatan perayu-perayu adalah bergantung kepada ladang pertanian yang dibangunkan oleh Felcra.

D **(2)** Terdapat bukti kukuh bahawa kesemua perayu-perayu telah diterima sebagai peserta di Rancangan Felcra. Terdapat keterangan dokumentari yang menunjukkan bahawa perayu-perayu adalah ahli koperasi yang ditubuhkan Felcra di Lubuk Sireh. Perayu-perayu juga telah menerima dividen/bayaran
E keuntungan di bawah Rancangan Felcra. Selain itu, surat dari koperasi yang menamatkan keahlian perayu-perayu, secara tersirat menyatakan bahawa perayu-perayu adalah peserta Rancangan Felcra sebelum penamatan tersebut.

F **(3)** Perayu-perayu pada semua waktu telah diterima, diiktiraf dan dilayani sebagai peserta-peserta Rancangan Felcra. Juga, semua keluarga yang ditempatkan semula di Lubuk Sireh adalah peserta Rancangan Felcra. Malah, Felcra melayanai, menerima dan mengiktiraf mereka sebagai peserta berdasarkan
G representasi yang dinyatakan oleh responden-responden pertama dan kedua kepada Felcra.

(4) Tiada keterangan yang menunjukkan bahawa Felcra sebenarnya bertindak atas satu andaian salah. Felcra pada semua masa bertindak atas arahan dan perintah responden-responden
H pertama dan kedua. Selain itu, responden-responden pertama dan kedua tidak mengemukakan sebarang bukti yang menunjukkan bahawa keputusan atau tindakan terdahulu mereka adalah sementara dan tidak muktamad dan tertakluk
I kepada temuduga.

(5) Perayu-perayu, dalam berpindah ke Lubuk Sireh, bergantung kepada representasi dan janji-janji yang dibuat oleh responden kedua. Untuk selama 13 tahun, mereka telah diiktiraf, diterima dan menikmati faedah-faedah sebagai peserta Rancangan Felcra. Responden kedua tidak boleh memplidkan bahawa mereka tidak peka akan semua ini. Keterangan menunjukkan bahawa responden kedua tahu bahawa perayu-perayu sudahpun menjadi peserta di Rancangan Felcra. Kedua-dua Felcra dan responden kedua adalah rakankongsi aktif di dalam Rancangan Felcra, di mana responden kedua bertindak melalui Felcra. Responden kedua juga malah pernah menganugerahkan award berprestij "Peneroka Jaya (Felcra)" kepada perayu-perayu.

(6) Keputusan responden kedua adalah tidak rasional dan tidak boleh diterima dan dijustifikasikan. Ia menggambarkan ketidak-rasionalan dan tindakan sebelah pihak di tahapnya yang paling tinggi. Perayu-perayu juga tidak diberikan hak untuk didengar sebelum responden pertama memutuskan untuk menamatkan keahlian koperasi mereka, walaupun selama ini mereka diiktiraf, diterima dan dilayani sebagai peserta Rancangan Felcra.

(7) Walau bagaimana luas sekalipun kuasa-kuasa dan budibicara yang dimiliki oleh responden kedua, adalah wajar untuk mengkehendakinya melaksanakan kuasa-kuasa tersebut dengan cara yang adil dari segi prosedurnya. Selaras dengan bertambahnya kuasa-kuasa kerajaan, wujud keperluan untuk mengenakan sekatan-sekatan keadilan prosedur bagi menjadikan ia sesuatu yang boleh diterima. Sebarang pelanggaran keadilan semulajadi akan menjadikan kuasa tersebut batal. Ketidakpatuhan kaedah-kaedah keadilan semulajadi akan menyebabkan pelaksanaan kuasa tidak sah.

(8) Wujud justifikasi yang banyak untuk menggunapakai doktrin harapa sah. Perayu-perayu tidak berandaian bahawa mereka telah diterima sebagai peserta Rancangan Felcra. Keterangan menunjukkan bahawa kesemua mereka (termasuk perayu-perayu) yang ditempatkan semula di Lubuk Sireh telah diiktiraf sebagai peserta Rancangan Felcra.

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Administrator, Transvaal v. Traub [1989] (4) SA 731 ***(refd)***

AG for New South Wales v. Quin [1990] 93 ALR 1 ***(refd)***

AG v. Ryan [1980] AC 718 ***(refd)***

Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Appeal [1995] 3 CLJ 639 CA ***(refd)***

Anvest Corp Sdn Bhd v. Wong Siew Choong Sdn Bhd [1998] 2 CLJ 245 CA ***(refd)***

Asia Hotel Sdn Bhd v. Malayan Insurance (M) Sdn Bhd [1992] 2 CLJ 1185; [1992] 2 CLJ (Rep) 121 HC ***(refd)***

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China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal [1996] 3 CLJ 163 FC ***(refd)***

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Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Development & Commercial Bank Bhd v. Abdullah Ismail & Anor [1989] 1 CLJ 190; [1989] 1 CLJ (Rep) 467 HC ***(refd)***

Dowrick 17 MLR 36 ***(refd)***

Fairmount Investments Ltd v. Secretary of State For the Environment [1976] 1 WLR 1255 ***(refd)***

Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480 ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

Garnac Grain Co Inc v. HMF Faure and Fairclough Ltd [1968] AC 1130 ***(refd)***

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Heard v. Pilley [1869] 4 Ch App 548 ***(refd)***

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KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd [1996] 2 CLJ 611 CA ***(refd)***

Kim Guan & Co Sdn Bhd v. Yong Nyee Fan & Sons Sdn Bhd [1983] 1 CLJ 273; [1983] CLJ (Rep) 19 PC ***(refd)***

Laker Airways Ltd v. Department of Trade [1977] QB 643 ***(refd)***

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Lee Ah Chor v. Southern Bank Bhd [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239 SC ***(refd)***

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Liu Wing Ngai t/a Kam Wah Ultrasonic Engineering Co v. Lui Kok Wai t/a Almac Machinery [1997] 1 SLR 559 ***(refd)***

Lucas v. Williams [1892] 2 QB 116 ***(refd)***

Mathavan Shunmugam v. Woo Bee Leng [1995] 2 CLJ 957 HC ***(refd)***

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McNabb v. United States, 318 US 332 (1943) ***(refd)***

Metroplex Development Sdn Bhd v. Mohd Mastana Makaddas & Anor [1995] 3 CLJ 70 HC ***(refd)***

Moore v. Peachey [1891] 7 TLR 748 ***(refd)***

Morgan v. Brydges [1818] 2 Stark R 314 ***(refd)***

Moses v. Macferlan [1760] 2 Burr 1005 ***(refd)***

Muniandy & Anor v. Muhd Abdul Kader Muhd Saheed & Ors [1989] 2 CLJ 577; [1989] 1 CLJ (Rep) 116 SC ***(refd)***

Oloniluyi v. Secretary of State for the Home Department [1989] Imm AR 135 ***(refd)***

Omychund v. Barker [1744] 1 Atk 21 ***(refd)***

Popular Industries Ltd v. The Eastern Garment Manufacturing Co Sdn Bhd [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635 HC ***(refd)***

R v. Bircham [1972] Crim LR 430 ***(refd)***

R v. Birmingham CC ex p Dredger [1993] COD 340 ***(refd)***

R v. Chief Constable for West Midlands, ex p Wiley [1995] 1 AC 274 ***(refd)***

R v. Devon County Council, ex p Baker [1995] 1 All ER 73 ***(refd)***

R v. Flynn [1972] Crim LR 428 ***(refd)***

R v. Hart [1932] 23 Cr App R 202 ***(refd)***

R v. Inland Revenue Commissioners ex p Matrix-Securities Ltd [1994] 1 WLR 334 ***(refd)***

R v. Inland Revenue Commissioners ex p MFK Underwriting Agencies Ltd [1990] 1 WLR 1545 ***(refd)***

R v. Inland Revenue Commissioners ex parte Unilever [1996] STC 681 ***(refd)***

R v. Inland Revenue & Commissioners, ex p SG Warburg & Co Ltd [1994] STC 518 ***(refd)***

R v. Jockey Club, ex p RAM Racecourses Ltd [1993] 2 All ER 225 ***(refd)***

R v. Liverpool Corpn, ex p Liverpool Taxi Fleet Operators' Association [1972] 2 QB 299 ***(refd)***

R v. Ministry of Agriculture, Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd [1995] 2 All ER 714 ***(refd)***

R v. Murphy [1841] 1 Arm & O. 206 ***(refd)***

R v. North and East Devon Health Authority, ex parte Coughlan [2000] 3 All ER 850 ***(refd)***

R v. Secretary of State for the Home Department, ex p Ruddock [1987] 2 All ER 518 ***(refd)***

A *R v. Secretary of State for Education and Employment, ex parte Begbie [2000] 1 WLR 1115* ***(refd)***
R v. Secretary of State for Transport, ex p Richmond – Upon – Thames LBC [1994] 1 WLR 74 ***(refd)***
Reynolds 94 LQR 225 ***(refd)***
B *Ridge v. Baldwin [1963] 1 QB 539* ***(refd)***
Ridge v. Baldwin [1964] AC 40 ***(refd)***
Roberts v. Ogilby [1821] 9 Price 269 ***(refd)***
Rosita Baharom & Anor v. Sabedin Salleh [1993] 2 CLJ 300 SC ***(refd)***
Saw Seng Kee v. Nadzri & Ng Securities Sdn Bhd [1997] 2 CLJ 425 CA ***(refd)***
C *Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch 149* ***(refd)***
Shaughnessy v. United States, 345 US 206 (1953) ***(refd)***
Sivalingam Periasamy v. Periasamy & Anor [1996] 4 CLJ 545 CA ***(refd)***
Spackman v. Plumstead District Board of Works [1885] 10 App Cas 229 ***(refd)***
D *The Chartered Bank v. Yong Chan [1974] 1 LNS 178 FC* ***(refd)***
Voinet v. Barrett [1885] 55 LJ QB 39 ***(refd)***
Wong See Leng v. C Saraswathy Ammal [1954] 1 LNS 133 CA ***(refd)***
Yap Nyo Nyok v. Bath Pharmacy Sdn Bhd [1993] 3 CLJ 188 HC ***(refd)***
Yew Wan Leong v. Lai Kok Chye [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330 SC ***(refd)***

E **Legislation referred to:**
Evidence Act 1950, ss. 61, 62, 63, 64, 65
Land (Group Settlement Areas) Act 1960, ss. 34(1), (2), 35(2)
National Land Rehabilitation And Consolidation Authority (Incorporation) Act 1966, ss. 5(1)(a), 6(1), (2)(e)
F
Civil Service Order in Council 1982 [UK], art. 4

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G Craig, *Administrative Law,* 2nd edn, 1989, pp 471-473
W Wade & C Forsyth, *Administrative Law,* 8th edn (Oxford University Press: Oxford, 2000), pp 494-495

For the appellants - M Thayalan; M/s Thayalan & Assoc
For the 1st & 2nd respondents - Abdul Rashid Sudin
H *For the 3rd respondent - Daya Nair; M/s Nik Saghir & Ismail*

[Appeal from High Court, Kangar; Civil Suit No: 21-01-2001]

Reported by Usha Thiagarajah

I

JUDGMENT

Raus Sharif JCA:

[1] I have had the advantage of reading my learned brother Abdul Malik Ishak's judgment and I am in agreement with him in allowing this appeal. However, I would like to express my own reasons for doing so.

Background Facts

[2] Kerajaan Negeri Perlis ("2nd defendant") decided to build a dam at Timah Tasoh, Perlis. It was also decided that the villagers displaced by the dam project were to be resettled in an area known as Lubuk Sireh.

[3] The resettlement of the villagers was coordinated by Jawatankuasa Rayuan Penempatan Semula Empangan Timah Tasoh ("Timah Tasoh Committee"). The Timah Tasoh Committee was headed by a member of the "State Executive Council" ("1st defendant") for the "Land, Forest and Environment Portfolio". The resettlement started in April 1987 and continued in stages as follows:

Stage 1 (April 1987)	–	91 families
Stage 2 (Mac 1988)	–	156 families
Stage 3 (July 1988)	–	92 families
Stage 4 (1990)	–	36 families
Stage 5 (1993)	–	12 families
Stage 6 (1994)	–	07 families
Total		393 families

[4] The plaintiffs were amongst the villagers who were resettled at Lubuk Sireh. In agreeing to do so, they received cash compensation and/or payment from the 2nd defendant for their loss of land, houses, etc. For those who owned lands, the 2nd defendant paid them compensation pursuant to the Land Acquisition Act 1960. The plaintiffs also received from the 2nd defendant a plot of land to build their houses. They have obtained their titles to these plots of land and have each built their houses there.

A **[5]** In tendem with the resettlement programme, the 2nd defendant had invited Lembaga Penyatuan dan Pemulihan Tanah Persekutuan ("3rd defendant") also known as "Felcra" to develop the state land at Lubuk Sireh into an agricultural estate. Felcra started its role and development programme in 1986, covering an
B area of 2,153 hectares mainly planted with rubber trees. The resettlement area and the agricultural estate are all in the same area.

Plaintiffs' Case

C **[6]** It is the plaintiffs' case that as a result of the negotiations between the plaintiffs and the defendants, it was agreed that in consideration of them moving to Lubuk Sireh, the 2nd defendant had promised to provide them not only compensation for loss of
D land, houses, etc and a plot of land to build their houses, they were also promised participation in the agricultural estate undertaken by Felcra. In fact it is the contention of the plaintiffs that not only were they being promised participation at the Felcra scheme at the material time, they were and had already been
E accepted and recognised as participants of the scheme. They pointed out that they were resettled at Lubuk Sireh to enable them to participate in the Felcra scheme as their resettlement at Lubuk Sireh was part and parcel of 'Rancangan Felcra Lubuk Sireh'.

F **1st And 2nd Defendant's Case**

[7] The 1st and 2nd defendants' case is that the offer made to the plaintiffs to participate in the scheme was conditional and not final. The final decision was only made on 17 November 1999,
G after interviews were conducted between 26 June 1999 till 29 June 1999 to select the successful candidates. It is also contended by the 1st and 2nd defendants that it is the privilege and prerogative as well as the discretion of the 1st defendant in making the final decision on the allotment of shares in the scheme to the
H participants.

3rd Defendant's Case

[8] The Felcra's case is simple. Felcra only played the role as assigned to it under s. 5(1)(a) of the Felcra Act and would
I develop the land at Lubuk Sireh based on the instruction of the 1st defendant. According to the 3rd defendant, the decision to choose the participants and allocate them land rights are entirely within the powers of the 1st and 2nd defendants.

Issues & Findings

(i) Whether The Plaintiffs Have Been Selected And Accepted As Participants

[9] The learned trial judge held that the plaintiffs have had never been selected and accepted as participants of Felcra scheme, Lubuk Sireh. With utmost respect, I am unable to hold the same. In holding as such, I am fully aware that I am reversing the learned trial judge's finding of fact and conscious of the guiding principle that appellate court ought not to disturb judgment of the court below in the absence of any error. But there are instances where appellate intervention is permissible. (See *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; *China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal* [1996] 3 CLJ 163; *Kim Guan & Co Sdn Bhd v. Yong Nyee Fan & Sons Sdn Bhd* [1983] 1 CLJ 273; [1983] CLJ (Rep) 19 PC; and *Anvest Corp Sdn Bhd v. Wong Siew Choong Sdn Bhd* [1998] 2 CLJ 245). The present case is one of such instance. It is my judgment that there is overwhelming evidence in this case that the plaintiffs have already been accepted as participants of the scheme. The evidences are:

(i) Felcra Report (P1)

Paragraph 7.1 of P1 state explicitly that for Felcra Lubuk Sireh, all those resettled are recognized participants. It reads:

> Pemilihan Peserta
>
> 7.1 Mengikut amalan yang dilaksanakan oleh Felcra bersama-sama Kerajaan Negeri, pemilihan peserta-peserta Rancangan Tanah adalah melalui proses temuduga, tetapi berbeza dengan Lubuk Sireh ini di mana semua penduduk yang terlibat dengan perpindahan ini akan diiktiraf sebagai peserta rancangan.

The Pengurus Felcra Lubuk Sireh (SP3) at the material time, has confirmed the contents of P1 and testified that P1 was given to the representatives of the 1st defendant. However, none of the witnesses were called on behalf of the 1st and 2nd defendants challenging the correctness of the statement in para 7.1. In the entire cross-examination of SP3, it was not at all put to him that the said para 7.1 was wrong. Thus,

SP3's evidence on the said paragraph was unchallenged in cross-examination. This could only mean that all the villagers who were involved in the resettlement exercise were considered as participants in Felcra Lubuk Sireh.

(ii) Exhibits P29, D40, D41A, D41B And D42

Exhibit 29 is called "Laporan Penempatan Semula Felcra Lubuk Sireh Perlis Sehingga 31 Ogos 1997". The report contains a list of 268 names under the category "Senarai Nama Peserta Projek Felcra Lubuk Sireh Yang Telah Mendapat Kelulusan MMK Sebagai Peserta Felcra". The list of names include the plaintiffs and the names listed are all based on the decision of the 1st defendant. The witness for the 1st and 2nd defendants, Dato' Yazid bin Mat (SD2) in his evidence testified that:

> S: Ini senarai peserta Felcra Lubuk Sireh yang telah mendapat kelulusan Majlis Mesyuarat Kerajaan. Pada 1994 Felcra telah iktiraf 268 peserta sebagai peserta Felcra Lubuk Sireh?
>
> J: Setuju.

Exhibit P29, clearly shows that as at 31 August 1997, the 1st and 2nd defendants have already recognised and accepted 268 participants in Felcra Lubuk Sireh. Exhibit P29 must be read together with exhs. D40, D41A, D41B and D42, which are minutes of meetings of the 1st defendant stating that all those who are given plots of land to build their houses were recognised and accepted as participants in Felcra Lubuk Sireh. Exhibit D42 explicitly states "bagi mendapat tapak rumah di Lubuk Sireh untuk menjadi peserta-peserta Felcra Gugusan Lubuk Sireh".

(iii) Co-operative Society

There is a co-operative society called "Koperasi Peserta-Peserta Rancangan Felcra Gugusan Lubuk Sireh" set up by Felcra pursuant to s. 35(2) of the Land (Group Settlement Areas) Act 1960. This co-operative society is the basis on which Felcra operates at Lubuk Sireh. The plaintiffs were members of the cooperative as can be seen in exhs. P7, P34, P51, P52 and P53. They were members of the co-operative because they were already participants of the Felcra scheme.

The society's by-laws 10(1) provides as follows: A

> 10(1) Keanggotaan Koperasi ini terbuka kepada semua peserta-peserta Rancangan Felcra Gugusan Lubuk Sireh, Perlis dan keluarganya.

"Peserta" is defined as follows: B

> "Peserta" ertinya seseorang yang menyertai tanah rancangan yang diselenggarakan serta di bawah jagaan FELCRA secara tetap dan termasuklah yang belum menandatangani sebarang surat ikatan atau perjanjian secara rasmi dengan FELCRA'. C

(iv) JKPP (Felcra)

The Jawatankuasa Kemajuan Projek (JKPP) was set up on 21 April 1997. It was set up at a meeting attended by SD2 who D was at the material time a member of the 1st defendant. One of the plaintiffs (SP3) was actively involved in setting up JKPP Felcra Lubuk Sireh. In fact the plaintiffs have been actively involved in the JKPP as participants of the Felcra scheme at Lubuk Sireh as can be seen in exhs. P5, P14, P16, P17, P19, E P20 and P31. The members of the JKPP are elected at the Mesyuarat Agung Peserta-Peserta held every two years.

(v) Orientation Programme

In 1990, Felcra organised an orientation programme for F participants who had been accepted by the 1st defendant as participants of Felcra Lubuk Sireh. The orientation course was officiated by SD2, a member of the 1st defendant. The plaintiffs were amongst the participants who attended the G course. This course programme shows beyond doubt that those who attended the programme were fully recognised as participants of the scheme.

(vi) Agreement Between Plaintiffs And Felcra

H

There were agreements signed by the individual plaintiffs and Felcra. Though not produced at the trial, exhs. P4, P3 and P10 show that written agreements were signed between the plaintiffs and Felcra. The oral evidence of SP1, SP2, SP3, and SP4 confirmed that written agreements were in fact signed I individually between the plaintiffs and Felcra. Even SD2, the witness for the 1st and 2nd defendants agreed that written

agreements were signed by the plaintiffs. He, as a member of the 1st defendant was present when the agreements were signed.

(vii) Letters Terminating The Co-operative Society Membership

All the plaintiffs received letters from the Felcra Lubuk Sireh Co-operative Society terminating their memberships. The letters state that the plaintiffs are no longer participants of the scheme (bukan lagi sebagai peserta rancangan Felcra). This would of course mean that before the termination, they were participants (peserta rancangan Felcra).

(viii) Exhibit D45

Exhibit D45 is the letter dated 9 April 1999 from the 2nd defendant to Felcra. This letter shows that the 1st and 2nd defendants had already accepted and recognised 393 participants of Felcra Lubuk Sireh. The 393 participants were to get their share holding on an area to be determined later. The 393 participants were those who were already in Felcra Lubuk Sireh. The figure of 393 participants is consistent with the Felcra report as at 31 August 1997. All of the plaintiffs names appear there. By exh. 45, the 393 participants were already given shares in the Felcra scheme except that the size of the land to be given to them was not yet settled.

[10] From the above, the only reasonable conclusion that can be drawn is that the plaintiffs at all material time were already accepted, recognised and treated as participants in the Felcra scheme at Lubuk Sireh. All the villagers that were resettled at Lubuk Sireh were in fact participants of the Felcra scheme there. The 1st and 2nd defendants had already made the decisions *via* exhs. D40, D41A, D41B, D42 and D45 recognising and accepting the plaintiffs as "peserta-peserta rancangan Felcra Lubuk Sireh". Felcra in turn treated, accepted and recognised all of the plaintiffs as participants based on what the 1st and 2nd defendants officially informed and/or representated to Felcra.

[11] It was submitted on behalf of the 1st and 2nd defendants that the plaintiffs' earlier recognition as participants in the Felcra scheme at Lubuk Sireh, were temporary and were not final and/or were subject to interviews. But from exh. D45, the interviews had nothing to do with determining or finalising the participants. The

interviews were solely to find out from the 393 participants about the size of the land that they were expecting to get and their willingness to repay the development costs and within a shorter period. Exhibit D48 shows that the actual interviews were really with regard to the two points ie, the amount of land expected and the shortening of the development costs repayment periods.

[12] Therefore, it would be untenable to uphold the learned trial judge's finding that the plaintiffs had never been accepted as participants of Felcra scheme, Lubuk Sireh. Such finding is clearly against the weight of evidence admitted and established in this case. An appellate court is thus duty bound to intervene and correct the error.

(ii) Wrong Assumption

[13] The learned trial judge also ruled that both the plaintiffs and Felcra were under 'wrong assumption' that the plaintiffs were already participants of Felcra Lubuk Sireh before the 1st defendant's decision on 17 November 1999. The learned trial judge held that the 1st defendant's final decision on plaintiff participants were actually only on 17 November 1999. In doing so, the learned trial judge accepted the evidence of SD5, on behalf of Felcra that Felcra had wrongly assumed that the villager who were located at Lubuk Sireh, were participants of Felcra Lubuk Sireh. Again, with utmost respect, I am unable to agree on the learned trial judge's finding on this issue.

[14] Firstly, there is absolutely no evidence that Felcra actually acted on the so-called wrong assumption. Felcra at all times acted purely on the instructions and directions of the 1st and 2nd defendants. Before the decisions on 17 November 1999, Felcra was already informed that there were 393 participants at Felcra Lubuk Sireh. Exhibit D45 is very clear on this point.

[15] Secondly, Felcra did not plead the so-called wrong assumption in its statement of defence. Since it is not pleaded, Felcra must be precluded from raising it as a defence. The importance of pleadings can be found in many authorities. In *Muniandy & Anor v. Muhd Abdul Kader Muhd Saheed & Ors* [1989] 2 CLJ 577; [1989] 1 CLJ (Rep) 116 SC, then Supreme Court, accepted with approval what was said by Lord Diplock in *Hadmor Production v. Hamilton* [1983] 1 AC 191 at p 233:

A

> Under our adversary system of procedure, for a judge to disregard the rule by which counsels are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice, the right of each to be informed of any point adverse to him that is going to be relied upon by the judge, and to be given the opportunity of stating what his answer to its is …

B

In *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330 the Supreme Court agreed with what was said by Sharma J (as he then was) in *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42, in which Sharma J had made observation on the function of pleadings and the duty of the court to follow it:

C

> The court is not entitled to decide a suit on a matter which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of the suit should be confined to the pleads on which the parties are at variance.

D

E

Similarly in this case, to raise the so called issue of wrong assumption, is a non-starter, as it was never pleaded by the 3rd defendant in its statement of defence. The courts must only decide on the issues as pleaded by the parties.

F

[16] Thirdly, SD5, the witness relied upon by the learned trial judge had absolutely no personal knowledge of the relevant matters. He was at the material time not attached to nor involved in Felcra at Lubuk Sireh. He joined Felcra office at Alor Star in 1996 and had nothing to do with Felcra Lubuk Sireh. SD5 was not involved in preparing the relevant Felcra reports ie, exhs. P1, P28 and P29. The 393 participants were resettled in Felcra Lubuk Sireh well before SD5 joined Felcra at Alor Star. In contrast, SP3 was the Pengurus Felcra Lubuk Sireh at the material time. He had full personal knowledge of all relevant matters and he was involved in preparing the relevant Felcra reports/documents ie, P1, P3, P9, P10 and P24. SP3's evidence does not show any wrong assumption whatsoever on the part of Felcra.

G

H

I

[17] Fourthly, the issue of wrong assumption was not at all put to the plaintiffs' witnesses. As such, the defendants cannot rely on it as a defence. In fact from the questions asked by the learned counsel for Felcra during cross-examination of the plaintiffs' witnesses show that Felcra did not suffer from any wrong assumption but in actual fact merely followed the directions of the 1st defendant. Felcra at all times did not on its own choose or determine the participants at Lubuk Sireh. Felcra merely acted on the 1st and 2nd defendants instructions. Thus, the only conclusion is that the names of person listed at the various Felcra reports/documents prior to the decision on 17 November 1999 are based entirely on what the 1st and 2nd defendants notified, instructed and/or informed Felcra.

[18] Therefore, the learned trial judge's finding on the issue of 'wrong assumption' cannot be supported. Felcra's action in accepting the plaintiffs as participants of the Felcra scheme cannot be said to be based on its own 'wrong assumptions'. This is because, at all times, Felcra had acted purely on instructions and directions of the 1st and 2nd defendants.

[19] On the above reasons, I would make the same orders as that of my learned brother Abdul Malik Ishak, JCA.

[20] My learned sister Zaleha Zahari, JCA has seen this judgment in draft and has expressed her agreement with it.

Abdul Malik Ishak JCA:

Introduction

[21] This is an appeal against the decision of the learned judge of the High Court who dismissed with costs the appellants' claims against the three respondents. Giving way to the building of the Timah Tasoh dam in the State of Perlis, the appellants have all been re–settled, from their original villages, to the Lubuk Sireh area. The promises, be it by conduct or otherwise, by the respondents gave rise to the doctrine of legitimate expectation. Indeed, the very doctrine has been raised in para. 13(d)(iv) of the statement of claim. This doctrine, in its procedural aspects, bears a close resemblance to the *audi alteram partem* principle of natural justice. In the context of the substantive legal rights, this doctrine, in essence, has gone well beyond the boundaries of the procedural elements of natural justice. Sedley J, in *R v. Ministry of Agriculture,*

Fisheries and Food, ex p. Hamble (Offshore) Fisheries Ltd [1995] 2 All ER 714 at p. 724, correctly put the doctrine under the broad umbrella of fairness when he said, "the real question is one of fairness in public administration … . It follows that it cannot be any less unfair to frustrate a legitimate expectation that something will or will not be done by the (public authority) than it is to frustrate a legitimate expectation that the applicant will be listened to before the (public authority) decides whether to take a particular step."

Facts Of The Case

[22] The appellants were all initially staying in several villages, namely, at:

(a) Kampung Guar Jertik;

(b) Kampungs Batu 9, 10 and 11;

(c) Bukit Manik; and

(d) Tasoh Jalan Sahabat.

[23] And they were adversely affected by the decision of the second respondent – Kerajaan Negeri Perlis, to build the Timah Tasoh dam in the State of Perlis. The appellants were all displaced as a result of the dam project.

[24] The second respondent made the decision that the people displaced by the dam project were to be re–settled in an area measuring 5, 149 acres (see the examination-in-chief of Mohd Noor bin L. Daud (SD3) at p. 221 of Rekod Rayuan Jilid 1 ("RRJ1")) known as Lubuk Sireh in the State of Perlis. Lubuk Sireh was the right choice because it was a State land and the surrounding area was ideal for agricultural development (see exhs. (P1) at pp. 266 to 274 at Rekod Rayuan Jilid 2 ("RRJ2") and (P28) at pp. 532 to 539 of RRJ2). It was certainly not an easy task to re–settle the affected people to Lubuk Sireh. Even Dato' Yaziz @ Yazid bin Mat (SD2), the exco member at the material time, acknowledged the difficulty when he was being cross-examined by the appellants' counsel. At p. 211 of the notes of evidence at RRJ1, his evidence went like this:

S: Bila penduduk kena keluar dari Timah Tasoh ia menjadi isu besar di Perlis? A

J: Ada isu tetapi tidak besar.

S: Ada sesetengah penduduk enggan keluar pada mulanya?

B

J: Setuju.

[25] To encourage the people to re–settle at Lubuk Sireh, promises were made generously. Towards this end, both the first and the second respondents must be given due credit for their kindness towards the people affected by the re–settlement. The C appellants were promised:

(a) compensation for loss of land, house, etc;

(b) a plot of land each at Lubuk Sireh to build their houses; and D

(c) participation in the agricultural scheme undertaken by the third respondent – Lembaga Penyatuan Dan Pemulihan Tanah Persekutuan or better known as "Felcra", at Lubuk Sireh.

[26] Yaakob bin Shafie (SP2), a farmer in the broader sense of E the word ("... saya bekerja sebagai penoreh getah. ... Saya menoreh getah di atas tanah emak saya" – p. 145 of RRJ1), under cross-examination by the learned counsel for the first and the second respondents, testified as follows (see pp. 155 to 156 of RRJ1): F

S: Saham ini tidak kena mengena dengan pengambilan tanah?

J: Tak setuju. Sebab Kerajaan berjanji dia akan beri pampasan, lot tempat tinggal dan saham ladang. Menteri Besar yang buat janji itu. G

[27] Mohamed Razi bin Mustaffa (SP1), a farmer, who testified that he worked as a "peladang dan pekebun dan berkebun di atas tanah Haji Salleh" (see p. 123 of RRJ1), also gave evidence about the promises by the State Government of Perlis as seen at p. 124 H of RRJ1 in the following manner:

> Memang ada rundingan di antara wakil penduduk dengan pihak Kerajaan Negeri dan dipersetujui oleh Kerajaan Negeri bahawa mereka akan memberikan pampasan dan lot kediaman tempat tinggal, ketiga menjadikan penduduk yang terlibat peserta Felcra I Lubuk Sireh.

[28] The evidence of Ahmad bin Suboh (SP4), also a farmer ("saya bekerja sendiri dengan bercucuk tanam" – p. 176 of RRJ1), is more interesting. He adverted to the solemn promises made by the State Government of Perlis. He too alluded to the Royal address by His Royal Highness, the Raja of Perlis in regard to the sacrifices to be made in the course of re-settlement. Ahmad bin Suboh (SP4) testified as follows (see his examination-in-chief at pp. 176 to 177 of RRJ1):

> Pada 1986 dan 1987 saya tinggal di Batu 10, Jalan Kaki Bukit, Kangar, Perlis. Semasa itu saya bekerja sendiri dengan bercucuk tanam dan isteri saya berniaga gerai makanan. Tanah yang saya duduk di Batu 10 itu kepunyaan saya. Geran di atas nama ibu saya Habsah bt Yunus. Tanah itu tanah pesaka.
>
> Saya ada mendapat tahu daripada bancian oleh pihak-pihak tertentu dalam 1986 dan 1987 bahawa tanah itu akan terlibat dengan projek empangan Timah Tasoh.
>
> Setelah kita dapat tahu pemimpin masyarakat setempat telah adakan jawatankuasa bertindak. Kemudian kami juga dipanggil untuk berjumpa dengan pihak Kerajaan Negeri Perlis di bawah Menteri Besar YAB Dato' Ali dan kami juga dijemput dengar titah ucapan Almarhum Tuanku Syed Putra di mana dititah kami memberi pengorbanan. Selepas rundingan dan setelah kami berpuashati dengan janji Kerajaan Negeri kami bersetuju keluar. Untuk kami keluar Kerajaan Negeri bersetuju membayar pampasan yang setimpal ikut kategori harta yang terlibat, keduanya Kerajaan Negeri juga berjanji kepada kami untuk beri kami satu lot tanah di Felcra Lubuk Sireh dan ketiganya Kerajaan Negeri berjanji memberi satu lot ladang yang dikendalikan oleh Felcra dan kemudahan-kemudahan asas.

[29] It is apparent that the appellants agreed to move after hearing the promises advanced by the then Menteri Besar of Perlis. The cajoling succeeded. The Royal address too carried weight. With a carrot dangling in front of them, so to speak, the appellants were more than willing to be re–settled at Lubuk Sireh. They moved and re–settled at Lubuk Sireh. They were led up the garden path, so to speak. The notion of legitimate expectation is an interesting area of the law. I would, with respect, endorse the approach of Lord Fraser in *Attorney-General of Hong Kong v. Ng Yuen Shiu* [1983] 2 AC 629, especially that part where his Lordship said that "legitimate expectations in this context are capable of including expectations which go beyond enforceable

legal rights, provided they have some reasonable basis". His Lordship then proceeded to identify three practical questions underlying all legitimate expectation cases, namely: A

(a) To what has the authority committed itself?

(b) Has the authority acted unlawfully in respect of its commitment? B

(c) What should the court do about it?

[30] In the context of the present appeal, the first question is the easiest to answer. That the second respondent – the Kerajaan Negeri Perlis, had lawfully committed itself to providing the appellants with all those promises. The second question is certainly more difficult to answer because there is no magic formula for determining the legality of the actions. The court, for instance, in *R v. Secretary of State for Education and Employment, ex parte Begbie* [2000] 1 WLR 1115 faced a difficult task in balancing competing interests, weighing the value of flexibility of resource allocation against the need to adhere to promises. However, consistency of treatment and equality were, according to the court, equally important and it should be secured when an authority tried to depart from an established policy, whether or not there had actually been any detrimental reliance on the expectation. Here, in this appeal, the detriment was quite significant. To renege on the promises would certainly amount to an abuse of power. In regard to the third question, what would be the role of the court in such circumstances? What should this court do? There is only one answer. It is this. To compel the authority to keep to their promises. I will now continue with the narration of the facts. C D E F

[31] According to exhs. (P1) and (P28) – incidentally they are one and the same thing, there was no necessity to determine the participants to join the Felcra settlement scheme at Lubuk Sireh by way of an interview. The write–ups in exh. (P1) at p. 269 of RRJ2 and exh. (P28) at p. 536 of RRJ2 carried the following captions: G H

Pemilihan Peserta

7.1 Mengikut amalan yang telah dilaksanakan oleh Felcra bersama-sama Kerajaan Negeri, pemilihan peserta-peserta Rancangan Tanah adalah melalui proses temuduga, tetapi berbeza dengan Lubuk Sireh ini di mana semua penduduk yang terlibat dengan perpindahan ini akan diiktiraf sebagai peserta rancangan. I

[32] This meant that all the settlers who were involved in the re-settlement exercises were considered as participants in Felcra Lubuk Sireh and they need not be interviewed to determine their status. In reality, this was not to be. Interviews were conducted. And the interviews purportedly "untuk memasuki rancangan Felcra Lubuk Sireh" started in 1986 (see the letter dated 24 August 1986 at p. 275 of RRJ2). I use the the word "purportedly" because it will later be shown that the interviews were conducted solely to find out from the 393 participants in regard to the size of the land that they expected to get and their willingness to repay, at a shorter period of time, the development costs that will be incurred. At the point of time when the interviews were conducted, both the first and the second respondents had already recognised all the 393 participants in the Felcra Lubuk Sireh scheme (see exh. (D45) at pp. 633 to 634 of the Rekod Rayuan Jilid 3 ("RRJ3")). The re-settlement was co–ordinated by the "Jawatankuasa Rayuan Penempatan Semula Empangan Timah Tasoh." The members of this committee included the member of the first respondent for the "Tanah, Perhutanan dan Alam Sekitar" portfolio and the Pengarah Felcra Negeri Kedah/Perlis. At this juncture, it is ideal to reproduce exh. (P30) that can be seen at p. 586 of RRJ2, particularly the members of the selection committee:

(i) YB Ahli Majlis Mesyuarat Kerajaan (AMMK) (Tanah, Perhutanan dan Alam Sekitar). ... Pengerusi

(ii) Pengarah Tanah dan Galian Negeri Perlis

(iii) Pengarah Jabatan Pengairan dan Saliran Negeri Perlis

(iv) Pengarah IADP Negeri Perlis

(v) Pengarah Jabatan Penilaian

(vi) Pengarah FELCRA Negeri Kedah/Perlis

(vii) Penghulu Mukim Beseri/Titi Tinggi

(viii) YB ADUN Beseri.

[33] Now, the re-settlement from the affected villages to the Lubuk Sireh area started in April 1987 and it continued in stages. The following tabulations are germane to the occasion at hand (see pp. 267, 534 and 546 of RRJ2):

Stage One (April 1987)	...	91 families
Stage Two (March 1988)	...	156 families
Stage Three (July 1988)	...	92 families
Stage Four (1990)	...	36 families
Stage Five (1993)	...	12 families
Stage Six (1994)	...	7 families
	Total:	393 families

[34] Thus far, the appellants have received from the second respondent cash compensation and/or payment for their loss of land, houses, etc. And for those who were landowners, the second respondent paid them compensation in furtherance of and pursuant to the Land Acquisition Act 1960. It must also be borne in mind that the appellants have also each received from the second respondent a plot of land at Lubuk Sireh to build their own houses at their own expense. It is also ideal to mention that the appellants have obtained the titles to these plot of land and they have each built their houses there.

[35] Felcra – the third respondent, started its role and development programme at Lubuk Sireh in 1986. The second respondent – Kerajaan Negeri Perlis, invited Felcra to develop the State land in Lubuk Sireh. Felcra developed the State land at Lubuk Sireh into an agricultural estate in stages starting from 1986. A letter dated 11 January 1986 emanating from the Pejabat Pengarah Tanah Dan Galian, Perlis, Kangar to Felcra stated that the mandate had been given by the State Executive Council for Felcra to develop the Lubuk Sireh land with effect from 8 January 1986 and this letter can be seen at pp. 612 to 613 of RRJ3. The roles to be played by Felcra are also stated in exhs. (P1) and (P28). I might as well state that the re-settlement area and the agricultural estate are all located in the same area. The photostat plans at pp. 273 to 274 of RRJ2 and at pp. 538 to 539 of RRJ2 would certainly reinforce my assertions.

[36] The appellants lost their source of income when they were displaced from their original villages. Mohamed Razi bin Mustaffa (SP1) testified to this effect in his examination-in-chief at p. 123 of RRJ1:

A Akibat pembinaan empangan itu tanah datuk saya ditenggelami air dan kami kehilangan tempat bercucuk tanam, kampong halaman dan punca pendapatan.

[37] Yaakob bin Shafie (SP2) also testified to the like effect at p. 146 of RRJ1 at the examination-in-chief stage:

B

Saya mendapat tahu tanah di mana saya tinggal dan tempat saya menoreh getah akan terlibat dengan pengambilan untuk projek itu dalam 1990 iaitu kedua-dua tanah yang saya duduk dan menoreh getah.

C

[38] And Ahmad bin Suboh (SP4) also said the same thing in his examination-in-chief at p. 177 of RRJ1:

Apabila saya pindah ke tempat baru sumber pendapatan saya terjejas kerana isteri saya tak dapat berniaga dan saya tak dapat
D mencari kerja.

[39] It is in evidence that, at the re-settlement area, the appellants' source of income will be dependent on the agricultural estate developed by Felcra. In exhs. (P1) at p. 269 of RRJ2 and (P28) at p. 536 of RRJ2, the following averments were recorded:
E

Sumber Ekonomi Peserta

Punca pendapatan peserta-peserta pada masa akan datang adalah bergantung kepada ladang pertanian (getah) yang sedang
F dimajukan oleh Felcra.

Analysis

[40] The only issue left for determination is this. Whether the appellants have been selected and accepted to be participants in
G the Felcra scheme at Lubuk Sireh? The Malay language version of that would be as follows: "samada perayu-perayu telah dipilih dan diterima untuk menjadi peserta rancangan Felcra Lubuk Sireh?" This was the very question that was posed by the learned judge of the High Court as reflected at p. 33 of RRJ1. It is the stand
H of the appellants that not only were they promised participation at the Felcra scheme but, at all material times, they were and had already been accepted and recognised as participants in the Felcra scheme at Lubuk Sireh. The appellants said that they were re-settled at Lubuk Sireh to enable them to participate in the Felcra
I scheme there. The appellants contended that the re-settlement at Lubuk Sireh of the families displaced by the dam project and the

Felcra agricultural scheme at Lubuk Sireh were part and parcel of what was and is currently known as the "Rancangan Felcra Lubuk Sireh." The appellants also contended that, at all material times, the first and the second respondents had approved and accepted the appellants as participants of the Felcra scheme at Lubuk Sireh. At all material times, the appellants received benefits in the form of dividends and acted, for all intents and purposes, as participants of the Felcra scheme. Both the first and the second respondents were fully aware of the state of affairs wherein the appellants were fully recognised and accepted as participants of the Felcra scheme at Lubuk Sireh.

[41] You were displaced from your home because of the dam project and you have re-settled at Lubuk Sireh on account of the promises that were made to you by a person in authority. Surely you are entitled to hold onto those promises bearing in mind that you, as farmers, are only obeying the orders of the State Government who acted through its officers. You have been re-settled at Lubuk Sireh since 1987 and you have been receiving dividends from Felcra. By letter dated 27 June 2000 (see p. 384 of RRJ2) you have been informed that you ceased to be members of the Koperasi Peserta-Peserta Rancangan Felcra Lubuk Sireh on the alleged ground that you were not on the list of settlers who were allotted shares by the first respondent. But, why was this so? What was the reason behind it? You were not told as to why you ceased to be members of the co-operative society and as to why you were ousted as participants of the Felcra Lubuk Sireh scheme. After 13 long lingering years you have not been recognised and accepted as participants of the Felcra scheme at Lubuk Sireh. That cannot be right. The rationale or the basis for the doctrine of legitimate expectation is based on the duty to act fairly as a necessary element or concomitant of good governance or good administration (see W.Wade & C. Forsyth, *Administrative Law*, 8th edn (Oxford University Press: Oxford, 2000) 494 to 495; and Fiadjoe, *Commonwealth Caribbean Public Law*, 2nd edn (Cavendish Publishing Limited: London, 1999) at pp. 34 to 35) and can it be said that the appellants here expected to be treated fairly by the respondents just like the other successful participants? The answer would certainly be in the positive. The Privy Council in the leading case of *Attorney-General of Hong Kong v. Ng Yuen Shiu (supra)* extolled eloquently the virtue of fairness in good governance or good administration. There, their Lordships held, in quashing a

A deportation order, that "when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as the implementation does not interfere with its statutory duty." Sedley J, in *R v. Ministry of Agriculture, Fisheries*
B *and Food, ex p. Hamble (Offshore) Fisheries Ltd (supra)* explained the matter further in these eloquent words:

> While policy is for the policy-maker alone, the fairness of his or her decision not to accommodate reasonable expectations which
C the policy will thwart remains the court's concern ... . To postulate this is not to place the judge in the seat of the minister ... . It is the court's task to recognise the constitutional importance of ministerial freedom to formulate and reformulate policy; but it is equally the court's duty to protect the interests of those individuals whose expectation of different treatment has a
D legitimacy which in fairness outtops the policy choice which threatens to frustrate it.

[42] In *Attorney-General of Hong Kong v. Ng Yuen Shiu (supra)*, the facts may be stated as follows. Ng Yuen Shiu, an illegal immigrant
E from Macau, challenged the decision to remove him from Hong Kong. The government of Hong Kong had previously given an undertaking that each such case would be considered on its merits, but Ng Yuen Shiu had not been afforded the opportunity of explaining the humanitarian reasons why he should not be
F removed. He therefore had a legitimate expectation that a certain procedure would be followed and it was in the interests of good administration that the authorities should act fairly by implementing its stated policy.

[43] In *Oloniluyi v. Secretary of State for the Home Department*
G [1989] Imm AR 135, CA, the legitimate expectation doctrine was vigorously applied. There Oloniluyi had been given limited leave to remain in the United Kingdom as a student until 31 January 1987. She applied for an extension to allow her to continue with her studies. Intending to go to Nigeria for a holiday, she visited the
H offices of the immigration department. She was told that if she went away she would have no trouble in returning so long as she came back to the United Kingdom before 31 January 1987. On her return on 15 January she was refused leave to enter. The immigration officer refusing leave was acting in pursuance of his
I discretionary powers under the immigration rules. He was not

satisfied that she was a genuine student who intended to leave the United Kingdom on completion of her studies. His decision, however, was quashed because the assurances she had been given about her return had created a legitimate expectation that she would be admitted without difficulty.

[44] The cases would show that legitimate expectation as a ground for judicial review has had an erratic and an interesting history. Whilst it has an established role in the context of procedural impropriety, its substantive application has been applied rather inconsistently and its scope has never been fully reviewed and explored. In *R v. Secretary of State for Transport, ex p Richmond – Upon – Thames LBC* [1994] 1 WLR 74, its existence has been denied. Yet, however, where an applicant can demonstrate that a legitimate expectation has arisen, he has a powerful argument against a public body which has otherwise acted pursuant to the discretionary powers or duties lawfully conferred upon it. It is germane to state that a legitimate expectation in its procedural form arises where there has been a failure to follow an agreed, or customary, process of consultation. In the main, it is concerned about the quality of the decision making process.

[45] Now, in the context of the present appeal, the question to pose would be this. Were the reneging on the promises so "unfair as to amount to an abuse of power"?, following the test in *R v. Inland Revenue Commissioners ex parte Unilever* [1996] STC 681. While answering the question posed in the positive, I must say that this test was endorsed in *R v. North and East Devon Health Authority, ex parte Coughlan* [2000] 3 All ER 850. *Coughlan* is certainly interesting. It links the issue of fairness with the more solid legal concept of the abuse of power. This approach gives the broad notion of fairness on a better legal grounding. It fits more appropriately within the whole framework of administrative and constitutional law. It cannot be denied that the primary role of the courts in administrative and constitutional law is to prevent and/or to redress the abuses of state power against the individual. Having recognised this fact, then it lies within the proper functioning of the courts to protect against abuses which are caused by the denial of substantive legitimate expectation. With regard to the substantive legitimate expectation, the Court of Appeal in *Coughlan* said (see p. 870 of the All ER):

> Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.

[46] Further down the same page, the Court of Appeal in *Coughlan (supra)* said:

> The court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course. Here the court is confined to reviewing the decision on Wednesbury grounds … . On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself require the opportunity for consultation to be given unless there is an overriding reason to resile from it …. in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires.

[47] Two cases of central importance must be highlighted. The first is the case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223, CA, better known as the *Wednesbury* case. The second would be the case of *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374, HL, – or better known as the GCHQ case. These two cases were on judicial review and no new grounds for review have been set out by the learned judges there. *Wednesbury* case concerned a challenge mounted against the decision of the corporation to attach a condition to a cinema licence whereby children under the age of fifteen (15) were not permitted into a cinema on a Sunday. It was argued by the plaintiff there that such a condition was unreasonable and that it was therefore beyond the powers of the corporation to have imposed it. The Court of Appeal concluded that the condition was in fact reasonable, although it is at least open to argument whether the same conclusion would be reached on the facts were the case to be decided now – in this era of globalisation. The importance of the *Wednesbury* case lies in the

judgment of Lord Greene MR where his Lordship stressed the supervisory as opposed to the appellate nature of the jurisdiction. Lord Greene MR boldly identified a number of principles which could form the basis of a challenge to the exercise of executive discretion. These famous principles have now come to be known as the *Wednesbury* principles and they may be stated thus:

(a) the exercise of a discretion must be a real exercise of the discretion;

(b) in exercising such a discretion, the decision–maker must have regard to the relevant matters and must disregard the irrelevant matters;

(c) a discretion must not be exercised for reasons of bad faith or dishonesty; and

(d) a discretion must be exercised for the purpose for which it was intended.

[48] Now, in addition to all these principles, Lord Greene MR stated that as a general proposition a discretion must be exercised "reasonably". And if a discretion were exercised contrary to any one of the principles as stated above then it would be possible to conclude that the decision maker had acted unreasonably. But, over the years, the "*Wednesbury* unreasonableness" has been whittled down. And this is quite apparent in the GCHQ case.

[49] I will now state the facts in the GCHQ case. Under art. 4 of the Civil Service Order in Council 1982, made under the prerogative, the Minister for the Civil Service was empowered to make regulations or issue instructions relating to the terms of employment of the Civil Service employees. An instruction was issued banning employees at the Government Communications Headquarters (GCHQ) from being members of a trade union since it was feared that industrial action would disrupt the sensitive intelligence work undertaken there. It was believed that this in turn would pose a threat to national security. The established practice was that employees would be consulted prior to an alteration being made to their terms of employment. The applicant sought a declaration that the instruction was invalid due to a failure to consult. The House of Lords held that the instruction was reviewable either as a direct exercise of prerogative power or as the exercise of a delegated power conferred by the sovereign

under the prerogative. And although the union had a legitimate expectation to be consulted, this was defeated by the overriding interests of national security. So, it can readily be seen that the principle established in GCHQ to the effect that the exercise of prerogative power may be subject to review by the courts, puts such powers on a similar footing to statutory discretionary powers. But, not all prerogative powers are subject to the supervisory jurisdiction of the courts. In giving judgment in GCHQ, Lord Roskill felt that the view expressed by Lord Denning in *Laker Airways Ltd v. Department of Trade* [1977] QB 643, CA, that the prerogative was reviewable where it had been exercised improperly or mistakenly, was "far too wide". In Lord Roskill's opinion, the right of challenge was not unqualified. It depended "upon the subject matter of the prerogative power which is exercised." Accordingly, there were, as Lord Roskill puts it, certain "excluded categories" of prerogative powers, the exercise of which would not be subject to review by the courts. These included the treaty-making power; the defence of the realm; the prerogative of mercy; the grant of honours; the dissolution of Parliament; and, the appointment of ministers. Since several such powers clearly involve the exercise of political judgment and are matters of high policy, it would be very difficult for the courts to review their exercise without transgressing the doctrine of the separation of powers. Matters involving the exercise of political judgments are within the domain of the executive rather than the courts.

[50] The principle of legitimate expectation was first perceived by Lord Denning MR in *Schmidt v. Secretary of State for Home Affairs* [1969] 2 Ch 149, CA to denote something less than a right which may nevertheless be protected by the principles of natural justice. Put in another way, a legitimate expectation amounts to an expectation of receiving some benefit or privilege to which the individual has no right. It has been used by the courts on numerous occasions and in different contexts with the result that "there are many semantic confusions which have bedevilled this area of our law" (per Simon Brown LJ, in *R v. Devon County Council, ex p. Baker* [1995] 1 All ER 73, CA). In the words of Taylor J, in *R v. Secretary of State for the Home Department, ex p. Ruddock* [1987] 2 All ER 518, "the doctrine of legitimate expectation in essence imposes a duty to act fairly." The duty to act fairly applies in the context of legitimate procedural

expectations as demonstrated by the case of *R v. Liverpool Corpn, ex p. Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, CA. In *R v. Secretary of State for the Home Department, ex p. Ruddock (supra)*, the substantive benefit was that individuals not falling within the government's published criteria for telephone tapping would not have their telephone calls intercepted by the security services.

[51] I venture to say that even where no promise of a benefit has been made and there is no established practice of granting that benefit, the person concerned is, elementarily, entitled to be treated fairly. Thus, stall-holders in a market are entitled to be consulted before charges are increased (*R. v. Birmingham C.C. ex p. Dredger* [1993] COD 340). But residents in an old people's home to whom no promise of consultation has been made need not be consulted before the local authority closes the home (*R. v. Devon County Council ex p. Baker (supra)* at p. 89 adopting the approach of *A.G. for New South Wales v. Quin* [1990] 93 ALR 1 at 39).

[52] Whether an expectation exists, is clearly a question of fact. So, if a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect. Here, the appellants expected the respondents to keep to their promises and so the appellants expect that the doctrine of legitimate expectation to protect them and the said doctrine can be invoked to protect them. As I said, the statement of claim made reference to the doctrine of legitimate expectation and I must give effect to it in this judgment. But if a person is unaware of an undertaking made by a public authority, then he cannot expect compliance with that undertaking (*Chundawara v. Immigration Appeal Tribunal* [1988] Imm. AR 161, where an unincorporated but ratified treaty of which the claimant was unaware could not found legitimate expectation). A taxpayer, for instance, must rely upon a representation from the Revenue before his expectation will be protected (*R. v. Inland Revenue Commissioners ex p. Matrix-Securities Ltd* [1994] 1 WLR 334). But taxpayers seeking revenue clearance for their proposals must make full disclosure before the revenue's assurances will be binding (*R. v. Inland Revenue Commissioners ex p. MFK Underwriting Agencies Ltd* [1990] 1 WLR 1545).

[53] Expectations may be divided into two groups. Firstly, as I said earlier, a procedural expectation where a particular procedure not otherwise required has been promised. In *A.G. of Hong Kong v. Ng Yuen Shiu (supra)* for instance, where the government of Hong Kong announced that certain illegal immigrants would be interviewed before deportation, a procedural expectation was established. It must be emphasised that procedural expectations are protected simply by requiring that the promised procedure be followed. Here, it must be recalled that the selections of participants as stated in exh. (P1) at p. 269 of RRJ2 and exh. (P28) at p. 536 of RRJ2 do not require the settlers involved in the re-settlement exercises to be interviewed in order to determine their status. If this procedure were followed, all the appellants would be automatically considered as participants in Felcra Lubuk Sireh and the present appeal would not be before us now. Secondly, as I said earlier, a substantive expectation and this is often protected procedurally by extending to the person affected an opportunity to make representations before the expectation is snatched away. Thus, in situations where the recommended applicants for hospital posts were rejected in breach of a long established practice because they had complained about bad conditions, they were held entitled to a hearing before being rejected (*Administrator, Transvaal v. Traub* [1989] (4) SA 731).

[54] That would be the law. It is comforting to know that the scope of the doctrine of legitimate expectation is wide and far between. I will revert to this branch of the law at a later stage. Meanwhile, I must reiterate that there is overwhelming evidence that all the appellants have already been accepted as participants in the Rancangan Felcra Lubuk Sireh. Exhibits (P1) and (P28) are the reports of Felcra – the third respondent. The sole witness for Felcra was Ku Mohamad Rodzi bin Ku Mat Esa (SD5) and in examination-in-chief at p. 236 of RRJ1 he categorically said that he was not directly involved in the project Felcra Lubuk Sireh. The Malay language text reads as follows:

> Saya tidak terlibat secara langsung dalam Projek Felcra Lubuk Sireh.

(SD5) also said that he was the officer attached to the northern zone at Alor Setar from 1996 to 2002. And the Malay language text reads as follows (see p. 236 of RRJ1):

> Saya menjadi pegawai di Wilayah Utara di Alor Setar sebelum ini dari 1996 hingga 2002.

[55] The damning portions of para. 7.1 of exhs. (P1) at p. 269 of RRJ2 and (P28) at p. 536 of RRJ2 have been reproduced in the early part of this judgment and it explicitly states that for Felcra Lubuk Sireh all those re-settled are recognised as "peserta rancangan". And that Felcra Lubuk Sireh was different from other Felcra schemes. Abd. Hamid bin Ahmad (SP3) was the "Pengurus Felcra Gugusan Lubuk Sireh" at the material time and he has confirmed the contents of the Felcra reports and he even testified that the reports – referring to exhs. (P1) and (P28), were given to the representatives of the State Government. Under re-examination Abd. Hamid bin Ahmad (SP3) said (see p. 174 of RRJ1):

> Salinan buku ini (referring to exhibits (P1) and (P28)) ada diberi kepada wakil Kerajaan Negeri yang membuat lawatan. Tiada bantahan daripada Kerajaan Negeri ke atasnya.

[56] Abd. Hamid bin Ahmad (SP3) also categorically said that the reports (referring to exhs. (P1) and (P28)) were prepared during his tenure as the Pengurus Gugusan Lubuk Sireh and he too said that by virtue of para. 7.1 of the reports all the settlers were recognised as participants. It is ideal to reproduce his testimony (see the examination-in-chief at p. 165 of RRJ1):

> Laporan ini disediakan semasa saya menjadi Pengurus Gugusan Lubuk Sireh. Para 7.1 itu adalah betul. Semua penduduk yang terlibat dengan perpindahan akan diiktiraf sebagai peserta.

[57] It must be borne in mind that none of the witnesses called on behalf of the first and the second respondents testified that the said para. 7.1 of exhs. (P1) and (P28) was wrong. Perusing through the notes of evidence particularly focussing on the cross-examination of Abd. Hamid bin Ahmad (SP3), it is apparent that it was not put to him at all that the said para. 7.1 of exhs. (P1) and (P28) was wrong and/or based on Felcra's so called "anggapan salah" (see pp. 168 to 173 of RRJ1). On the contrary and to the credit of the appellants, Abd. Hamid bin Ahmad (SP3)'s evidence, on the said para. 7.1 of exhs. (P1) and (P28), went unchallenged.

[58] On 31 January 1990, written agreements were signed between the appellants and Felcra pertaining to the appellants participation in the Felcra Lubuk Sireh scheme. The minutes of the Second Annual General Meeting of the participants of the

Felcra Gugusan Lubuk Sireh held on 31 January 1990 would show that there was indeed a signing ceremony of the agreement between the appellants and Felcra (see pp. 278 to 282 of RRJ2). And at p. 282 of RRJ2, the following recitals appeared:

> **3. Penutup**
>
> Pengerusi mengucapkan terima kasih kepada semua peserta kerana memberi kerjasama untuk menjayakan majlis penerangan/ menandatangani perjanjian dan mesyuarat Agong Penubuhan AJKKP FELCRA Lubuk Sireh.

[59] Two more documents evidencing the signing of the agreement between the appellants and Felcra can be seen at pp. 303 to 304 of RRJ2. They are self explanatory and they speak volumes for the appellants. This happened on 21 April 1987. At p. 303 of RRJ2, the letter from Felcra was worded in this way:

> **Majlis Penerangan Menandatangani Perjanjian Peserta dan Mesyuarat Agong Penubuhan AJKKP FELCRA Lubuk Sireh**
>
> Sukacita dimaalomkan majlis tersebut diatas akan diadakan pada 21hb. April, 1987 bersamaan hari Selasa mulai jam 8.30 pagi bertempat di Dewan Orang Ramai Batu 16, Jalan Kaki Bukit, Kangar, Perlis.
>
> Aturcara penoh majlis berkenaan dikembarkan bersama-sama ini untuk maaluman dan perhatian tuan/puan.
>
> Untuk tujuan ini, saya dengan besar hati dan penoh harapan menjemput tuan/puan ke majlis berkenaan pada tarikh dan masa yang telah ditetapkan.
>
> Sekian, kehaziran tuan/puan sangatlah dialukan. Terima kasih.
>
> 'BERKHIDMAT UNTUK NEGARA'
>
> Yang benar,
> Sgd. (Illegible)
> (Abd. Hamid bin Ahmad)
> Pengurus,
> FELCRA Gugusan Hulu Pauh,
> **Arau, Perlis.**
>
> s.k. Pengarah Perlaksanaan
> Pengarah Khidmat Sosial
> Pengarah FELCRA Negeri Kedah/Perlis.

[60] And at p. 304 of RRJ2, the programme for the signing ceremony showed the attendance of Dato' Yaziz @ Yazid bin Mat (SD2) on 21 April 1987 and it was worded in this way:

Aturcara Majlis Penerangan Menandatangani Perjanjian Peserta Dan Mesyuarat Agong Penubuhan AJKKP Felcra Lubuk Sireh Pada 21hb. April, 1987

8.30 pagi	–	Para Peserta Mengambil Tempat
9.10 pagi	–	Para Jemputan Mengambil Tempat
9.20 pagi	–	Ketibaan Yang Berhormat Tuan Haji Yazid bin Mat Ahli Majlis Mesyuarat Kerajaan Negeri Perlis
9.25 pagi	–	Majlis Perasmian Dimulakan
	–	Bacaan Doa Selamat
	–	Ucapan Aluan Oleh Pengarah Perlaksanaan FELCRA
	–	Ucapan Perasmian Oleh Yang Berhormat Tuan Haji Yazid bin Mat Ahli Majlis Mesyuarat Kerajaan Negeri Perlis
	–	Penyampaian Cenderamata
	–	Jamuan Ringan
11.15 pagi	–	**Ceramah I:** Tajuk: Pembangunan Tanah Oleh FELCRA Oleh: Pengarah FELCRA Negeri Kedah/Perlis
1.00 t.hari	–	Jamuan Tengahari
2.15 petang	–	**Ceramah II:** Tajuk: Syarat-syarat Perjanjian Peserta Peraturan Dan Keistimewaan Oleh: Ibu Pejabat FELCRA
3.30 petang	–	**Ceramah III:** Tajuk : Tugas Dan Peranan AJKKP Oleh : Ibu Pejabat FELCRA
	–	Mesyuarat Agong Penubuhan JKKP Dimulakan
	–	Jamuan Ringan Dan Bersurai.

[61] Dato' Yaziz @ Yazid bin Mat (SD2) was also present on 30 January 1990 for the orientation course conducted by Felcra and it was there that the agreement was signed. At p. 353 of RRJ2 is exh. (P10) and it shows that the orientation course conducted by Felcra was officiated by the said Dato'. Exhibit (P10) merits reproduction:

Lembaga Penyatuan Dan Pemulihan Tanah Persekutuan (FELCRA)

Kursus Orientasi
Peserta-Peserta FELCRA Gugusan Lubuk Sireh,
Titi Tinggi, Perlis

Dirasmikan
Oleh:

Yang Berhormat Tuan Haji Yazid bin Mat,
Ahli Majlis Mesyuarat Kerajaan Negeri Perlis

Pada : 30hb. Januari, 1990

Jam : 8.00 Pagi

Tempat : Pejabat Felcra Gugusan Lubuk Sireh.

[62] And the programme for 30 January 1990 can be seen at p. 356 of RRJ2 and it was worded in this way:

Aturcara Majlis Perasmian Kursus Orientasi Peserta
Peserta FELCRA Gugusan Lubuk Sireh,
Titi Tinggi, Perlis
Pada 30hb. Januari, 1990

0800 pagi – Peserta-peserta mendaftarkan diri dan menandatangani Surat Perjanjian,

0845 pagi – Ketibaan dif-dif jemputan,

0900 pagi – Ketibaan YB Tuan Haji Yazid bin Mat
Ahli Majlis Mesyuarat Kerajaan Negeri Perlis

0910 pagi – Bacaan Do'a oleh
Tuan Haji Shamsudin bin Othman

0915 pagi – Ucapan alu-aluan oleh Pengurus
FELCRA Gugusan Lubuk Sireh, Perlis

0925 pagi – Ucapan oleh Pengarah
FELCRA Negeri Kedah/Perlis

0945 pagi – Ucapan Perasmian oleh
YB Tuan Haji Yazid bin Mat

– Ahli Majlis Mesyuarat Kerajaan Negeri Perlis

10.15 pagi – Jamuan Ringan

10.45 pagi – YB Tuan Haji Yazid bin Mat dan Dif-Dif
Jemputan meninggalkan majlis.

[63] Oral evidence was also led to show that written agreements were signed between the appellants and Felcra. Mohamad Razi bin Mustaffa (SP1), in examination-in-chief at p. 126 of RRJ1, testified as follows:

> Majlis tandatangan perjanjian ini ialah perjanjian di antara kita dengan Felcra. Kita tandatangan atas dokumen dan selepas perjanjian ini kita dianggap peserta-peserta Felcra dan kemudian daripada itu kita menghadiri mesyuarat agong Felcra. Selepas tandatangan perjanjian kami tidak diberi salinan perjanjian itu.

[64] And under cross-examination, at p. 135 of RRJ1, Mohamad Razi bin Mustaffa (SP1) categorically said:

> Saya dipindahkan pada tahun 1987 dalam peringkat pertama. Tahun 1987 telah wujud Felcra. Saya pasti sebab saya tandatangan perjanjian 1987 dan duduk dalam kawasan Felcra Gugusan Lubuk Sireh yang ditanam dengan pokok getah dan ada perumahan.

[65] Yaakob bin Shafie (SP2), in examination–in–chief, testified as follows (see p. 146 of RRJ1):

> Selepas itu dia orang minta tandatangan perjanjian dengan Felcra untuk menjadi peserta Felcra. Saya tandatangan perjanjian itu di pejabat Felcra Lubuk Sireh. Saya tidak mendapat salinan perjanjian itu.

[66] Under cross-examination, Yaakob bin Shafie (SP2), testified in this manner (see p. 155 of RRJ1):

> Setelah masuk dalam 1995 saya tandatangan perjanjian jadi peserta Felcra. Perjanjian itu tidak diberi kepada saya.

[67] Abd. Hamid bin Ahmad (SP3), in examination-in-chief at p. 163 of RRJ1, testified as follows:

A Ada perjanjian ditandatangan antara peserta-peserta dan Felcra. Saya ada lihat perjanjian ditandatangan. Setelah diperakuikan oleh Kerajaan Negeri jadi saya akan membuat majlis ini untuk tandatangan perjanjian. Perjanjian ini standard untuk seluruh Malaysia. Bagi Felcra Lubuk Sireh perjanjian yang sama digunakan. Selepas perjanjian-perjanjian itu ditandatangan saya akan majukan kesemuanya ke Ibu Pejabat Felcra di Kuala Lumpur. Jadi dalam tahun 1987 selepas perjanjian-perjanjian ini ditandatangan saya majukan ke Kuala Lumpur. Semasa perjanjian itu dihantar ke Ibu pejabat cuma tandatangan peserta sahaja yang ada. Peserta-peserta tidak diberi sesalinan perjanjian itu.

[68] Again, under cross-examination, Abd. Hamid bin Ahmad (SP3) spoke of the signing of the agreement in this way (see pp. 168 to 169 of RRJ1):

D Tujuan perjanjian adalah untuk menjadi peserta. Sebelum tandatangan belum menjadi peserta. (P4) dirujuk. Tandatangan pada hari yang sama. Dalam aturcara tidak disebut acara tandatangan. Tetapi saya ingat bahawa ada tandatangan. Sebahagian besar peserta yang hadir ada tandatangan. Saya tidak tandatangan bagi pihak Felcra. Pada masa itu pihak Felcra tidak E tandatangan. Kepada saya tidak dipulangkan kembali perjanjian itu daripada Ibu pejabat. Begitu juga kepada peserta.

Put : Walaupun ada tandatangan mereka bukan lagi menjadi peserta.

F J : Tak setuju.

[69] Under re-examination at p. 173 of RRJ1, Abd. Hamid bin Ahmad (SP3) said that he saw the participants signing the agreement and that was the first time that he was involved in the signing ceremony with the participants.

[70] Another witness by the name of Ahmad bin Suboh (SP4), in examination-in-chief, also spoke about signing the agreement and this was what he said (see p. 181 of RRJ1):

H Apabila saya keluar dari Batu 10 dalam 1989 saya ada tandatangan perjanjian dengan Felcra. Ia ditandatangan selepas saya pindah. Perjanjian ditandatangan dalam 1990 atau 1991 di pejabat Felcra di hadapan Pengurus Felcra. Ramai yang menandatangani perjanjian itu. Pihak Felcra beritahu dokumen itu akan dihantar ke ibu pejabat Felcra untuk kerja-kerja berkaitan. Salinan perjanjian itu I tidak diberikan.

[71] Finally, Dato' Yaziz @ Yazid bin Mat (SD2) who was called by the respondents in the High Court testified as to the agreement when he was being cross-examined in this way (see p. 212 of RRJ1):

S : Keduanya untuk tandatangan perjanjian peserta?

J : Ada perjanjian.

[72] Again at p. 213 of RRJ1, the said Dato' under cross-examination admitted that the participants signed the agreement. This was what the said Dato' said:

S : Peserta ada tandatangan surat perjanjian?

J : Ada.

[73] But the said Dato' under re-examination at p. 217 of RRJ1 turned turtle and gave the following version about signing the agreement:

> Saya hadir majlis itu sebagai Ahli Majlis Mesyuarat Kerajaan yang dijemput. Saya tidak ada menyaksikan tandatangan perjanjian antara Felcra dan peserta. Saya tak tengok. Felcra yang atur majlis itu. Perjanjian tidak diserah kepada saya. Saya hadir untuk rasmikan majlis. Apa-apa urusan pada hari itu adalah antara Felcra dan peserta di situ.

[74] But, with respect, at least on 21 April 1987 when the said Dato' attended the signing ceremony of the agreement as well as the Annual General Meeting of Felcra Lubuk Sireh as seen at p. 304 of RRJ2 and as reproduced somewhere in this judgment, he knew about the signing ceremony of the agreement. The said Dato' cannot feigned ignorance. As an executive councillor of the State of Perlis he should know why he attended the event on 21 April 1987. The said Dato', with respect, cannot pretend not to know about the event on 21 April 1987 bearing in mind that he attended the event. Incidentally, para. 9 of the statement of claim at pp. 69 to 70 of RRJ1 alluded to the agreements between the parties in extenso and I shall now reproduce them:

> 9. [i] Between 1987-1994 each of the settlers, including the Plaintiffs, entered into separate agreements with the 3rd Defendant which provided, *inter alia*, that:
>
> [a] The 3rd Defendant would permit the settlers, including the Plaintiffs, to participate in the Scheme.

A [b] The settlers, including the Plaintiffs, would be registered as holders pursuant to section 35 of the Land [Group Settlement Areas] Act 1960 [hereinafter referred to as the "the Act"].

B [c] The settlers would pay by instalments over a period of 15 years the consolidated annual charge pursuant to Section 20 of the Act. The payment is to be deducted from the settlers' share of the profits in the Scheme.

C [d] The settlers would pay to the 3rd Defendant all expenses incurred or to be incurred by it in order to develop the Scheme. The payment would be deducted from the income from the sale of rubber from the Scheme.

D [e] If a settler dies, his or her share in the Scheme would be transferred to his or her next of kin pursuant to Section 16 of the Act.

[f] The settlers may assign their rights in the Scheme only in accordance with Section 24 of the Act.

E [g] After the settlers have settled all the payments due from them under paras 9[c] and 9[d] above, the Scheme would be reverted to the 2nd Defendant for alienation to the settlers in the form of shares in a co-operative society or otherwise.

F [ii] Neither the Plaintiffs nor the other settlers were given copies of the abovesaid agreements and although the Plaintiffs' solicitors have, by their letters dated 7.8.2000 and 3.10.2000 requested the 3rd Defendant to supply to them a copy of the same but the 3rd Defendant has failed/neglected and/or refused to do so. The Plaintiffs will refer to the material terms of the agreement at the trial after discovery.

G

[75] I will now say something about the role played by Felcra at the "Rancangan Felcra Lubuk Sireh." Felcra is established under the National Land Rehabilitation And Consolidation Authority H (Incorporation) Act 1966 (Act 398) (hereinafter referred to as the "Felcra Act"). Under the Felcra Act, the word "Authority" refers to Felcra and the words "group settlement area" has the meaning assigned to it in the Land (Group Settlement Areas) Act 1960. The functions of Felcra are set out in s. 5(1)(a) of the Felcra Act I and that section enacts as follows:

5. Functions of the Authority

(1) The functions of the Authority as regards the States of Malaysia other than the States of Sabah and Sarawak shall be to consolidate, rehabilitate or develop –

(a) either of its own motion and with the approval of the appropriate State Authority, or at the request of such State Authority, any State lands (including lands within a group settlement area); and

[76] And the powers of Felcra are set out in ss. 6(1) and 6(2) of the Felcra Act and they are worded as follows (the relevant parts):

6. Powers of the Authority

(1) For the purpose of carrying out its functions under section 5(1) (a), the Authority shall have all the powers and duties conferred on the Federal Land Development Authority by Part VII of the Land (Group Settlement Areas) Act 1960; and the provisions of that Part and the Second Schedule to that Act shall subject to this section apply to the Authority as they apply to the Federal Land Development Authority.

(2) As respects the application of Part VII of and the Second Schedule to the Act aforesaid, the following modifications shall have effect –

(a) references to Development Authority shall be construed as references to the Federal Land Consolidation and Rehabilitation Authority;

(e) in relation to an area which has been declared to be a group settlement area –

(i) section 34 (1) shall be read as if for the words appearing before paragraph (a) there were substituted the words 'The State Authority may permit the Federal Land Consolidation and Rehabilitation Authority to develop or rehabilitate any group settlement area; and for that purpose the State Authority may make an agreement with the Federal Land Consolidation and Rehabilitation Authority vesting the area in the Authority and containing the following matters, that is to say'; and

(ii) section 34 (2) shall be read as if paragraphs (a) and (b) were deleted.

[77] It is also ideal to make reference to the Land (Group Settlement Areas) Act 1960 (Act 530) particularly to s. 34 thereof. That section enacts as follows:

> **34. Federal development areas and re-vesting of such areas in the State**
>
> (1) The State Authority may permit the Development Authority to develop any State land as a group settlement area; and for that purpose the State Authority may make an agreement with the Development Authority relating to the following matters:
>
> (a) the location and area of such land;
>
> (b) the division of such land into rural and urban settlement areas;
>
> (c) the appropriate crop or crops;
>
> (d) the size of holdings and the number, nature and size of parcels thereof;
>
> (e) the rate at which amounts due to the State by way of premium, rent and other charges are to be collected as a portion of the consolidated annual charge, and the date from which the collection of such portion shall begin and the period for which it shall continue;
>
> (f) any other matter falling within the provisions of this Act by which the interests of the State are affected;
>
> (g) the terms and conditions upon which the Development Authority may own or occupy housing sites within any urban settlement area.
>
> (2) The following provisions shall attach to any agreement aforesaid:
>
> (a) that the State Authority shall declare in accordance with the provisions of this Act the area in question to be a group settlement area to be developed by the Development Authority;
>
> (b) that upon such declaration being made, the area shall vest in the Development Authority.

[78] While s. 35 of the Land (Group Settlement Areas) Act 1960 (Act 530) enacts as follows:

35. Development of group settlement areas by co-operative societies organised by the Development Authority

(1) The Development Authority may permit any land vested in it under section 34, cultivated or to be cultivated collectively, to be developed or managed by such co-operative society as it may organise; and the Chairman of the Development Authority may direct that any such area (hereinafter referred to as 'a co-operative group settlement area') shall be surveyed as one whole or in as many lots as may be convenient for cultivation.

(2) As respects a co-operative group settlement area, no person other than a member of the co-operative society concerned shall be registered as a holder in the register of holdings; and the Manager appointed under section 36 shall make no record of any specific lot number or of a survey lot but shall record only the share or shares held in such society by the member registered in such register as the holder.

(3) A member registered in the register in accordance with subsection (2) shall, to the extent of the shares held by him in the society (as recorded in the register) hold an undivided share in the co-operative group settlement area.

(4) In relation to a co-operative group settlement area, the register of holdings mentioned in subsection (2) shall, notwithstanding the provisions of section 12(1), be in Form 'D' in the First Schedule.

[79] Interestingly, there is no evidence that the scheme at Lubuk Sireh has been declared a group settlement area. That being the case, s. 34 of the Land (Group Settlement Areas) Act 1960 (Act 530) will apply without modifications to the Felcra scheme at Lubuk Sireh. However, s. 6(2) (e) of the Felcra Act will not apply here because there is no evidence that the Felcra scheme at Lubuk Sireh is located at "an area which has been declared to be a group settlement area."

[80] It must be borne in mind that there is no dispute at all that Felcra is involved in the "Rancangan Felcra Lubuk Sireh". Felcra, as a body established under the statute, has to act according to its statutory functions, duties and powers. So, Felcra's operation at Lubuk Sireh would be "to consolidate, rehabilitate and develop" the State land there and it must, by necessary implication, be in accordance with s. 5(1)(a) of the Felcra Act. The letter dated 11 January 1986 from the "Pejabat Pengarah Tanah Dan Galian, Perlis, Kangar" addressed to Felcra as seen at p. 612 of RRJ3

categorically show that the State Authority has agreed that the State land at Lubuk Sireh be developed by Felcra. In its original text, that letter is worded as follows (see exh. (D39) at p. 612 of RRJ3):

Rancangan Projek Penempatan Semula Lubuk Sireh, Perlis

Adalah saya diarah merujuk kepada surat tuan bertarikh 19hb. November, 1985 mengenai perkara di atas, dengan ini memaklumkan bahawa Pehak Berkuasa Negeri yang bersidang pada 8.1.1986 telah bersetuju pada dasarnya, tanah di Lubok Sireh seperti bertanda merah dalam peta yang disertakan bersama-sama ini dimajukan oleh FELCRA.

Sekian dimaklumkan.

[81] Even the Felcra reports at exh. (P1) at pp. 270 to 271 of RRJ2 tabulated the roles to be played by Felcra at Lubuk Sireh and I shall now reproduce them:

9. Peranan FELCRA

9.1. Felcra telah memulakan peranan dan program pembangunan tanah mulai pada tahun 1986 setelah diputuskan oleh Kerajaan Negeri melalui Mesyuarat Jawatankuasa Pemandu Projek Pembangunan Pertanian Bersepadu (IADP) Bilangan 2/85 bertarikh 12hb. September, 1985.

9.2. Peranan dan program utama Felcra ialah memajukan kawasan ladang pertanian seluas 2,153 hektar secara berperingkat-peringkat bermula pada tahun 1986 seperti pelan di Lampiran B. Keluasan kawasan tanaman getah mengikut peringkat pembangunan adalah seperti berikut:-

Nama Projek	Luas (Hektar)	Tahun Mula Ditanam
Lubuk Sireh I	285	08.11.1986
Lubuk Sireh II	322	18.08.1988
Lubuk Sireh III	385	02.04.1989
Lubuk Sireh IV	460	02.06.1989
Lubuk Sireh V	235	03.07.1991
Lubuk Sireh VI	212	01.06.1992
Wang Kelian	65	20.04.1986
Tasoh	126	23.10.1990
Jumlah	2,090	

9.3. Selain dari tanaman getah terdapat juga sebahagian kecil kawasan ditanam dengan pokok-pokok buah-buahan (Dusun) di atas kawasan seluas 63 hektar seperti berikut:

Jenis Tanaman	Luas (Hektar)	Mula Ditanam
Mempelam		
Harumanis	16	25.05.1989
Mas Indera	25	15.10.1989
Dokong	10	15.12.1990
Belimbing	12	25.10.1990
Jumlah	63	

9.4. Peranan Felcra berikutnya ialah untuk memajukan masyarakat serta meningkatkan taraf ekonomi peserta-peserta. Untuk menentukan matlamat ini dapat dicapai dengan berkesan beberapa institusi telah diujudkan seperti berikut:

- Jawatan Kuasa Kemajuan Projek (JKKP)
- Koperasi Peserta-Peserta Rancangan (KPR)
- Persatuan Wanita Dinamis Felcra (WADIRA)
- Jawatankuasa Taman Bimbingan Kanak-Kanak (TABIKA).

[82] Giving the evidence its correct appraisal, it is correct to say that, pursuant to ss. 6(1) and 6(2) of the Felcra Act read together with s. 34(1) of the Land (Group Settlement Areas) Act 1960 (Act 530), Felcra developed the State land at Lubuk Sireh as "a group settlement area". And according to s. 34(2) of the Land (Group Settlement Areas) Act 1960 (Act 530), any agreement between Felcra and the State Authority must provide, *inter alia*, for the State Authority to declare the area in question to be a group settlement area and thereafter for the land to be vested in Felcra. Furthermore, s. 35 of the Land (Group Settlement Areas) Act 1960 (Act 530) read together with ss. 6(1) and 6(2) of the Felcra Act provide for the development of group settlement areas by co-operative societies organised by Felcra. The appellants have specifically pleaded that the Felcra scheme at Lubuk Sireh was subject to s. 35 of the Land (Group Settlement Areas) Act 1960 (Act 530) (see para. 9(i)(b) of the statement of claim at p. 69 of RRJ1 as reproduced earlier). In their written submissions, the first

A and the second respondents have agreed as to the applicability of the Land (Group Settlement Areas) Act 1960 (Act 530) and this can be seen at p. 811 of RRJ3 and I shall now reproduce them:

> Adalah dihujahkan juga bahawa operasi Felcra Lubuk Sireh adalah
B secara peruntukan Akta (Kawasan Penempatan Berkelompok) 1960 dan dibuat secara saham Ladang seperti di bawah seksyen 35 Akta tersebut.

[83] Again, at p. 888 of the first and the second respondents' written submissions as seen in RRJ1, the application of the Land
C (Group Settlement Areas) Act 1960 (Act 530) was not disputed. I will now reproduce them:

> **2. Akta Tanah (Kawasan Penempatan Berkelompok) 1960.**
>
> Seksyen 35 adalah tidak dibantah oleh Defendan pertama dan
D kedua. Sistem yang digunakan di Felcra Lubuk Sireh ialah Sistem Saham.

[84] Thus, based on the above narratives, it is crystal clear that the "Rancangan Felcra Lubuk Sireh" was developed by a co-
E operative society organised by Felcra pursuant to ss. 34 and 35 of the Land (Group Settlement Areas) Act 1960 (Act 530). In fact, the "Rancangan Felcra Lubuk Sireh" is a "co-operative group settlement area". It can readily be surmised that the relationship between the first and the second respondents with Felcra (the
F third respondent) here is governed by statute. Felcra operates at Lubuk Sireh with the approval of and/or at the request of the State Government of Perlis (see exh. (D39) at p. 612 of RRJ3 as reproduced earlier). Indeed, the Government of Perlis permitted Felcra to develop the State land at Lubuk Sireh as a "co-
G operative group settlement area". There is no pre-requisite that the State land must be declared as a group settlement area before s. 34 of the Land (Group Settlement Areas) Act 1960 (Act 530) takes effect. The decision of the State Executive Council further enhanced the role of Felcra in running the Felcra scheme in
H Lubuk Sireh and that decision can be seen at p. 617 of RRJ3 which reads as follows:

> **(iv) Pegangan Saham Ladang Peserta FELCRA Lubuk Sireh**
>
> Majlis meminda keputusan Mesyuarat Majlis Mesyuarat
I Kerajaan bertarikh 11 Ogos 1999 di mana kelulusan pemberian pegangan saham ladang FELCRA Lubuk Sireh dikurangkan daripada 268 orang peserta kepada 259 peserta

dan meluluskan pemberian pegangan saham ladang seluas 10 relong seorang kepada peserta-peserta seperti di Lampiran 'A'.

[85] There is no dispute that at Lubuk Sireh, Felcra has already acted pursuant to s. 35 of the Land (Group Settlement Areas) Act 1960 (Act 530). And Felcra even set up the "Koperasi Peserta-Peserta Rancangan Felcra Gugusan Lubuk Sireh Perlis Berhad" with its own by-laws (Undang-Undang Kecil) to boot with (see pp. 314 to 351 of RRJ2).

[86] The appellants' claims against the three respondents can be seen in the statement of claim at pp. 74 to 75 of RRJ1 and for convenience it will now be reproduced:

(i) A declaration that each of the plaintiffs (appellants) are entitled to a shareholding in the rubber plantation referred to in paragraphs 1 and 6 hereof (referring to the Statement of Claim) to the extent of 10 acres (in the course of the appeal it becomes apparent that it should be 10 relongs).

(ii) A declaration that the first defendant's (respondent's) decision made on 17.11.1999 alloting shareholdings to the settlers without including the plaintiffs (appellants), is illegal and a nullity.

(iii) Exemplary damages for infringement of constitutional rights.

(iv) Damages.

(v) Specific performance of the agreements referred to in paragraph 9 hereof (referring to the Statement of Claim).

(vi) Interest.

(vii) Costs.

(viii) Further and/or other relief as this Honourable Court may deem fit.

[87] Basically, the appellants are seeking, *inter alia*, for a declaration from the respondents:

(i) that the appellants are entitled to a shareholding in the rubber plantation in Lubuk Sireh to the extent of ten relongs; and

(ii) that the first respondent's decision on 17 November 1999, excluding the appellants, is illegal and a nullity.

Further written submissions were filed by counsel for all the parties. They all agreed that there is enough land at Felcra Lubuk Sireh for all the 393 participants to be given shareholdings amounting to ten relongs (7.11 acres) each. We were told that each participant's dividend, at present, is calculated on the basis of shareholding measuring ten relongs (7.11 acres) only and that the balance or the undistributed profit from the scheme is kept by Felcra who will then transmit it to the second respondent.

[88] Now, the first respondent's decision on 17 November 1999 has been marked as an exh. (P22) and it can be seen at p. 414 of RRJ2. It is also the same as exh. (D47) which can be seen at p. 636 of RRJ3. Both exhs. (P22) and (D47) are worded in this way:

Pejabat Setiausaha Kerajaan Negeri Perlis
Ibu Pejabat Kerajaan Negeri,
01990 Kangar, Perlis

SUK.Ps. 04/166(38) 25 November 1999

Pengurus Kawasan FELCRA Berhad
Gugusan Lubuk Sireh
Batu 16, Jalan Kaki Bukit
02200 Kaki Bukit, Perlis.

Tuan,

Pegangan Saham Ladang Peserta FELCRA Lubuk Sireh

Dengan hormatnya dimaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 17.11.1999 telah membuat keputusan seperti berikut:-

> Majlis meminda keputusan Mesyuarat Majlis Mesyuarat Kerajaan bertarikh 11 Ogos 1999 dimana kelulusan pemberian pegangan saham ladang FELCRA Lubuk Sireh dikurangkan daripada 268 orang peserta kepada 259 peserta dan meluluskan pemberian pegangan saham ladang seluas 10 relong kepada peserta-peserta seperti di Lampiran 'A'.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,
Sgd. (Illegible)
(Ahmad bin Zakaria)
Setiausaha Majlis Mesyuarat Kerajaan
b.p. Setiausaha Kerajaan Perlis.

[89] And that was in the nature of a final decision from the first respondent. It was confined to holding the shares of Ladang Felcra Lubuk Sireh to the extent of ten relongs. All the appellants' names were removed from the list. Before us, the learned counsel for the appellants craved for prayers (i) (as amended to ten relongs), (ii), (iv), (vi) and (vii). The learned counsel for the appellants withdrew and abandoned prayer (iii) on exemplary damages and prayer (v) on specific performance.

[90] The learned counsel for Felcra submitted that Felcra has only played the role assigned to it under s. 5(1)(a) of the Felcra Act and that would be to develop the State land at Lubuk Sireh based on the instructions given to them by the Perlis State Authority (see exh. (D39) of RRJ3). It was pointed out that Felcra has no powers beyond what has been provided for in s. 6 of the Felcra Act. Felcra also submitted through its learned counsel that the decision to choose the settlers and allocate to them land rights were entirely within the ambit and the realm of powers of both the first and the second respondents (see the evidence of Mohd. Noor bin L. Daud (SD3) in cross-examination at p. 221 of RRJ1). Felcra's stand has been made known. That the prerogative of choosing who will be a settler lies with the first and the second respondents.

[91] Felcra was not too happy that the documents relied upon by the appellants were those belonging to Felcra. Proof that the appellants were chosen as settlers must come from the documents issued by the first and the second respondents – so submitted the learned counsel for Felcra. Section 64 of the Evidence Act 1950 enacts that documents must be proved by primary evidence. It is certainly based on the best evidence rule. Section 62 of the Evidence Act 1950 enacts that primary evidence means the document itself produced for the inspection of the court while s. 65 of the same Act provides the exceptions to this rule. In *Popular Industries Ltd v. The Eastern Garment Manufacturing Co Sdn Bhd* [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635, Edgar Joseph Jr. J (as he then was) aptly said:

A It is a firmly established rule (to which there are exceptions) requiring that when documentary evidence is tendered, primary evidence of the document, that is to say the production of the documents itself is essential (see section 65 of the Evidence Act). The exceptions to the rule are also well – established and
B specifically provided for (see section 65(1) of the Evidence Act).

[92] Now, so long as the documentary evidence is tendered, be it from the documents belonging to Felcra or otherwise, that would be sufficient because what is essential and of utmost importance is the production of the document itself in court.

C

[93] The appellants are also challenging the decision of the first respondent made on 11 August 1999 as seen in exh. (P21) at pp. 404 to 413 of RRJ2. Exhibit (P21) reads as follows:

D **Pegangan Saham Ladang Peserta FELCRA Lubuk Sireh**

Dengan hormatnya dimaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 11.8.1999 telah meluluskan pemberian pegangan saham ladang dengan keluasan yang akan ditentukan kemudian kepada 268 orang peserta FELCRA Lubuk
E Sireh dengan diberi keutamaan kepada mereka yang terlibat dengan pengambilan balik tanah seperti di Lampiran 'A'.

[94] In exh. (P21), the names of only five (5) appellants were listed as successful. The rest of the appellants failed to make the grade. Likewise, as I said earlier, the appellants challenged the
F decision of the respondent made on 17 November 1999 as seen in exh. (P22) at p. 414 of RRJ2 and in exh. (D47) at p. 636 of RRJ3. Exhibits (P22) and (D47) excluded all the appellants from the "Rancangan Felcra Lubuk Sireh".

G **[95]** I will now say something about the co-operative society – better known as the "Koperasi Peserta-Peserta Rancangan Felcra Gugusan Lubuk Sireh". Now, this co-operative society was set up by Felcra pursuant to s. 35(2) of the Land (Group Settlement Areas) Act 1960 (Act 530). This co-operative society is the basis
H on which Felcra operates at Lubuk Sireh. Pursuant to s. 35(2) of the Land (Group Settlement Areas) Act 1960 (Act 530), only a member of the co-operative society can be registered as a holder in the register of holdings. There are documentary exhibits to show that the appellants were all members of the co-operative
I society. Exhibits (P7) at p. 312 of RRJ2, (P34) at pp. 598 to 600 of RRJ2, (P51) at pp. 660 to 707 of RRJ3, (P52) at pp. 708 to 730 of RRJ3, and (P53) at pp. 731 to 743 of RRJ3 would be

relevant and they certainly support the assertions by the appellants that they were members of the co-operative society. These exhibits speak volumes for the appellants. Exhibit (P7) at p. 312 of RRJ2, for instance, confirmed the balance of the shares held by the member in the co-operative society. While in exh. (P34) at p. 598 of RRJ2, the following statement appears and it lends credence to the claim of the appellants that they were members of the co-operative society. That statement reads as follows:

Penyataan Ahli Lembaga Pengarah Koperasi

Saya dengan ini mengesahkan bahawa mereka yang namanya dicatat di dalam Buku ini adalah seorang ahli yang berdaftar dengan Koperasi Peserta Rancangan ini dan memegang unit saham seperti yang tercatat di dalam Buku ini dan tertakluk kepada syarat-syarat dan undang-undang kecil Koperasi Peserta Rancangan ini.

Ditandatangani oleh
Yang DiPertua/Pengerusi:
Sgd. (Illegible)

Yang DiPertua
Koperasi Peserta-Peserta Rancangan
Felcra Gugusan Lubuk Sireh Perlis Bhd.

[96] In exh. (P51) at p. 660 of RRJ3, the certification of a member appears and it reads as follows:

Perakuan Ahli

Saya dengan ini mengesahkan dan bersetuju bahawa:

(i) Saya adalah ahli yang berdaftar dengan koperasi ini dan memegang unit saham seperti yang tercatat di dalam Buku ini.

(ii) Saya dengan ini bersetuju dan terikat dengan syarat-syarat dan undang-undang kecil Koperasi Peserta Rancangan saya.

Tandatangan/Cap: Sgd. (Illegible) Tarikh: 2.6.97
Ibu Jari Kiri.

[97] Next, in exh. (P52) of p. 708 of RRJ3, the official receipt of the co-operative society can be seen. And finally, at p. 731 of RRJ3 in exh. (P53), the distribution of the dividends arising out of the profits of the co-operative society in 1994 was declared and ready for collection.

[98] Section 61 of the Evidence Act 1950 enacts that the contents of documents may be proved either by primary or by secondary evidence. Primary evidence, according to s. 62 of the Evidence Act 1950, means the document itself produced for the inspection of the court. Of course, in cases where primary or best evidence is not available, then secondary evidence as envisaged in s. 63 of the Evidence Act 1950 can be adduced. Lord Esher aptly said in *Lucas v. Williams* [1892] 2 QB 116 that:

> Primary evidence is evidence which the law requires to be given first; secondary evidence is evidence which may be given in the absence of that better evidence when a proper explanation of its absence has been given.

[99] And Lord Hardwicke in *Omychund v. Barker* [1744] 1 Atk. 21, 49 rightly said that, "the judges and sages of the law have laid it down that there is but one general rule of evidence, the best that the nature of the case will permit."

[100] We are fortunate to have these documents in the appeal records – in RRJ2 and in RRJ3. They really assisted us in adjudicating this appeal expeditiously. Now, the appellants were members of the co-operative society by virtue of the fact that they were already participants of the "Rancangan Felcra Lubuk Sireh". By-law 10(1) of the co-operative society's by-laws states as follows:

> Keanggotaan Koperasi ini terbuka kepada semua peserta-peserta Rancangan Felcra Gugusan Lubuk Sireh, Perlis dan keluarganya.

[101] "Peserta" or participant is defined in the cooperative society's by-laws as follows:

> 'Peserta' ertinya seseorang yang menyertai tanah rancangan yang diselenggarakan serta di bawah jagaan FELCRA secara tetap dan termasuklah yang belum menandatangani sebarang surat ikatan atau perjanjian secara rasmi dengan FELCRA.

[102] The "Jawatankuasa Kemajuan Projek (JKKP)" at Felcra Lubuk Sireh was set up by Felcra on 21 April 1987. The JKKP was set up at a meeting attended by Dato' Yaziz @ Yazid bin Mat (SD2) who was an exco member of the first respondent at the material time (see p. 303 of RRJ2 as reproduced earlier). Abd. Hamid bin Ahmad (SP3) was actively involved in setting up the JKKP at Felcra Lubuk Sireh and this cannot be denied (see pp. 277, 279, 281, 303, 423, 460 and 462 of RRJ2). The

appellants too have been actively involved in the JKKP at Felcra Lubuk Sireh as "peserta-peserta rancangan". Support for this assertion can be seen at pp. 276 to 302 of RRJ2, at pp. 459 to 498 of RRJ2 and at pp. 499 to 531 of RRJ2. And exhs. (P5), (P14), (P15), (P16), (P17), (P19), (P20), and (P31) of RRJ2 would also support such an assertion. Incidentally, the members of the JKKP are elected at the Mesyuarat Agong Peserta-Peserta held every two (2) years.

[103] On 30 January 1990 and on 31 January 1990 (see exh. (P9) at p. 352 of RRJ2), Felcra organised an orientation course for the participants who have been "diperakukan oleh Kerajaan Negeri Perlis sebagai peserta-peserta Felcra". The orientation course was officiated by Dato' Yaziz @ Yazid bin Mat (SD2) (see exh. (P10) at pp. 353 and 356 of RRJ2) and the course programme showed beyond per adventure that those who attended were fully recognised as participants of Felcra Lubuk Sireh scheme (see pp. 357 to 358 of RRJ2).

[104] Even the profits or dividends of the Felcra scheme at Lubuk Sireh were paid to the appellants (see exh. (P11) at pp. 367 to 382 of RRJ2) and such payments were based on the shares in the Felcra scheme. It must be emphasised that the appellants have already received payments from the profits or dividends of the Felcra scheme. And oral evidence to this effect can be seen in the evidence of Mohamad Razi bin Mustaffa (SP1) at p. 131 of RRJ1. Yaakob bin Shafie (SP2) also confirmed receiving the profits or dividends of the Felcra scheme at Lubuk Sireh (see pp. 148, 152 and 154 of RRJ1). The profits or dividends would usually be distributed on two occasions. Firstly, during Hari Raya Puasa. Secondly, on the opening of the first term of school. Ku Mohamad Rodzi bin Ku Mat Esa (SD5) also spoke of the dividends that were paid by the co-operative society (see pp. 250 to 251 of RRJ1 and p. 253 of RRJ1). Likewise, Dato' Yaziz @ Yazid bin Mat (SD2) testified under cross-examination that dividends were paid twice in a year to the participants of the Felcra scheme at Lubuk Sireh (see pp. 215 to 216 of RRJ1).

[105] Both exhs. (P13) at pp. 384 to 385 of RRJ2 and (P23) at pp. 421 to 422 of RRJ2 are one and the same thing. They are the letters dated 27 June 2000 terminating the appellants' memberships of the co-operative society. The same letter also

A appears as exh. (P54) at pp. 744 to 797 of RRJ3. It is only appropriate for me to reproduce the relevant portions of that letter in its original text (exhs. (P13), (P23) and (P54)):

> **Terhenti Menjadi Anggota Koperasi Di Dalam Koperasi**
> B **Peserta-Peserta Rancangan (KPR) FELCRA Lubuk Sireh, Perlis Berhad**
>
> Dengan segala hormatnya perkara di atas adalah dirujuk.
>
> 2. Dimaklumkan, memandangkan nama tuan/puan telah tidak
> C tersenarai sebagai peserta rancangan yang sah (tidak memiliki pegangan saham ladang) di bawah Skim Tanah Rancangan Felcra Lubuk Sireh oleh Majlis Mesyuarat Kerajaan Negeri, maka dengan sendirinya tuan/puan bukan lagi sebagai peserta rancangan Felcra dan dengan itu juga tuan/puan tidak layak menjadi anggota di dalam koperasi ini.
>
> D
> 3. Dalam hal ini, setelah dirujuk kepada Pihak Pendaftar Koperasi dan selaras dengan peruntukan UUK 20(2)(d) undang-undang kecil koperasi ini, adalah menjadi tanggungjawab ALK Koperasi ini untuk memberhentikan keanggotaan tuan/puan di dalam koperasi ini setelah mendapati tuan/puan telah tidak diterima menjadi
> E peserta rancangan Felcra Lubuk Sireh melalui keputusan yang telah dibuat oleh Majlis Mesyuarat Kerajaan Negeri.
>
> Pihak koperasi mengucapkan ribuan terima kasih diatas sumbangan yang telah tuan/puan hulurkan disepanjang penglibatan di dalam
> F koperasi ini dan tuan/puan boleh memohon semula untuk menjadi anggota koperasi ini jika sekiranya tuan/puan telah diluluskan menjadi peserta rancangan yang sah oleh Majlis Mesyuarat Kerajaan Negeri nanti.

[106] The termination letter states, *inter alia,* that the appellants
G are no longer participants of the Felcra scheme at Lubuk Sireh and by necessary implication, before the termination, the appellants were participants in the scheme. The termination of the appellants from being members of the co-operative society was based on the by-laws (Undang-Undang Kecil), particularly by-law 20(1)(d) which
H reads as follows:

> 20.(1) Keanggotaan seseorang anggota terhenti atas sebab-sebab di bawah ini, mengikut mana yang berkenaan:
>
> (d) berhenti atau disingkirkan dari menjadi peserta-peserta
> I Rancangan Felcra Gugusan Lubuk Sireh, Perlis.

[107] From the long drawn factual matrix as demonstrated, the only conclusion that one can arrive at would be that the appellants, at all times, were already accepted, recognised and treated as participants in the Felcra scheme at Lubuk Sireh. Evidently, all the families that were re-settled at the rancangan Felcra Lubuk Sireh were in fact participants of the Felcra scheme. It must be recalled that the first and the second respondents had already made the decisions as reflected at exhs. (D40) of p. 614 of RRJ3, (D41A) and (D41B) of p. 615 of RRJ3, (D42) of p. 616 of RRJ3, and (D45) of pp. 633 to 634 of RRJ3 recognising and accepting the appellants as "peserta-peserta rancangan Felcra Lubuk Sireh". In fact, Felcra treated, accepted and recognised all the appellants as participants based on what the first and the second respondents had officially informed and/or represented to Felcra. According to exh. (P30) as seen at pp. 586 to 587 of RRJ2, the representatives of the three respondents were members of the "Jawatankuasa Rayuan Penempatan Semula Empangan Timah Tasoh" and this was the committee that confirmed the list of the names of the participants in the scheme. This committee was set up for the entire Felcra scheme and not just for the purpose of the re-settlement. It was for this reason that Felcra was made a member of the committee.

[108] Abd Hamid bin Ahmad (SP3), the Pengurus Felcra Lubuk Sireh at the material time, was a member of the "Jawatankuasa Rayuan Penempatan Semula Empangan Timah Tasoh" (see his evidence at the examination-in-chief stage at p. 162 of RRJ1), and he testified that he obtained the information stated in several of the Felcra documents from his position as a member of that committee (see also his examination-in-chief at pp. 164 and 165 of RRJ1). Dato' Yaziz @ Yazid bin Mat (SD2), the state executive councillor for the "Tanah Dan Perhutanan" portfolio and who was the chairman of the "Jawatankuasa Rayuan Penempatan Penduduk-Penduduk Timah Tasoh" (see his examination-in-chief at p. 205 of RRJ1), attended several of Felcra's functions wherein the appellants also attended as "peserta rancangan Felcra Lubuk Sireh" (see pp. 303 to 304 of RRJ2, pp. 356 to 358 of RRJ2, and, of crucial importance, exh. (P9) as seen at p. 352 of RRJ2). The evidence of Dato' Yaziz @ Yazid bin Mat (SD2) showed that he knew and he acknowledged that the appellants were recognised and accepted as participants of the Felcra scheme at Lubuk Sireh.

[109] The learned judge of the High Court decided that both the appellants and Felcra were under the "wrong assumptions" that the appellants were already participants of the Felcra scheme before the first respondent's decisions as seen in exhs. (D43) of pp. 617 to 623 of RRJ3, (D47) of p. 636 of RRJ3 which is the same as (P22) of p. 414 of RRJ2, (D44) of pp. 624 to 632 of RRJ3 and (D46) of p. 635 of RRJ3. The learned judge of the High Court also decided that Felcra's final decisions in regard to Felcra's participants were only made *via* exhs. (D43), (D47)/(P22), (D44) and (D46) – see the judgment of the learned judge at pp. 36 to 45 of RRJ1. The learned judge of the High Court accepted completely the evidence of Ku Mohamad Rodzi bin Ku Mat Esa (SD5) who gave evidence on behalf of Felcra to the effect that before receiving exh. (D45) of pp. 633 to 634 of RRJ3, Felcra wrongly assumed that the "penduduk yang dipindahkan itu menjadi peserta" (see the judgment of the learned judge at pp. 36 to 38 of RRJ1). Felcra submitted before the learned judge of the High Court and in its submissions Felcra contended that its actions in accepting the appellants as Felcra Lubuk Sireh participants were based on its own "wrong assumptions". The same submissions were made before us.

[110] With respect, the learned judge of the High Court's findings on this point are flawed for the following reasons:

(a) There was no available evidence to show that Felcra actually acted on the so called "wrong assumptions". At all times, Felcra acted purely on the instructions and directions of the first and the second respondents. Before exhs. (D44) and (D46) as well as (D43) and (D47) were issued, Felcra was already informed that there were 393 participants at Felcra Lubuk Sireh. Exhibit (D45) is a letter from the office of the State Secretary of Perlis addressed to the "Pengurus Kawasan Felcra Berhad, Gugusan Lubuk Sireh, Batu 16 Jalan Kaki Bukit, 02200 Kaki Bukit, Perlis" and it was dated 9 April 1999. That letter was worded in this way (see exh. (D45) at pp. 633 to 634 of RRJ3):

> **Cadangan Keluasan Pemilikan Saham Ladang Peserta FELCRA Lubuk Sireh I-VI**
>
> Dengan hormatnya dimaklumkan bahawa Majlis Mesyuarat Kerajaan yang bersidang pada 17 Mac 1999 telah membuat keputusan seperti berikut:-

Majlis menimbang Kertas MMK. Bil. 51/1999 dan membuat keputusan supaya FELCRA melaksanakan keputusan mengikut susunan tertib perkara-perkara yang telah ditentukan dan tidak dilaksanakan sekaligus seperti berikut:

i) Majlis mengarahkan supaya FELCRA menjalankan temuduga secara individu ke atas 393 peserta FELCRA Lubuk Sireh untuk mendapatkan maklumbalas mengenai keluasan saham ladang yang diharapkan oleh para peserta.

ii) Majlis mengarahkan FELCRA supaya mengkaji kesanggupan para peserta untuk menjelaskan bayaran balik kos pembangunan dalam jangka masa yang lebih singkat dan pada masa yang sama menimbangkan pemberian hak milik tanah kepada para peserta.

iii) Majlis meluluskan secara dasar pemberian pegangan saham ladang kepada 393 orang peserta FELCRA Lubuk Sireh pada kadar keluasan yang akan ditentukan.

iv) Majlis mengarahkan supaya FELCRA mengeluarkan surat tawaran kelulusan secara dasar ini kepada 393 orang peserta FELCRA Lubuk Sireh.

v) Majlis mengarahkan FELCRA supaya mengemukakan maklumat-maklumat berikut:

a) Minit mesyuarat mengenai keluasan untuk pembahagian tanah ladang dan tapak rumah di FELCRA Lubuk Sireh sebagai gantirugi kepada tanah yang diusahakan dan rumah yang terlibat dengan Projek Pembinaan Empangan Timah Tasoh.

b) Senarai peserta-peserta FELCRA Lubuk Sireh mengikut kategori berikut:

i) Peserta yang dipindahkan daripada Timah Tasoh:

a) Mereka yang mengusahakan tanah sahaja di Timah Tasoh.

b) Mereka yang mempunyai rumah sahaja di Timah Tasoh.

c) Mereka yang mengusahakan tanah dan mempunyai rumah di Timah Tasoh.

ii) Peserta-peserta FELCRA Lubuk Sireh yang dibawa masuk dari luar Timah Tasoh:

A

a) Pekerja-pekerja FELCRA.

b) Peserta PPRT Kampong Sahabat.

c) Lain-lain peserta.

B (b) In a letter dated 13 July 2000, Felcra did not refer to the so-called "wrong assumptions" and this letter can be seen in exh. (P30) at pp. 586 to 587 of RRJ2 and I must reproduce that letter:

C Rujukan: FELCRA Berhad (00-034) 392/5 (14-331) (14)

Tarikh: 13 Julai 2000

En. Ahmad b. Suboh
D/a Pejabat Pengurus Kawasan
FELCRA Berhad Lubuk Sireh,
D Batu 16, Jalan Kaki Bukit,
02100 Padang Besar,
Perlis Indera Kayangan.

Tuan,

E **Pemakluman Mengenai Pemilihan Dan Penempatan Peserta FELCRA Berhad Lubuk Sireh**

Berhubung dengan perkara di atas, Pihak Pentadbiran FELCRA Berhad ingin memberi penjelasan mengenai tatacara pemilihan peserta FELCRA Berhad Lubuk Sireh.

F

2. Penempatan di projek FELCRA Berhad Lubuk Sireh dilaksanakan dan disusun untuk menempatkan pemindahan penduduk-penduduk yang tinggal diatas tapak pembinaan Empangan Timah Tasoh sejak tahun 1987 lagi. Program perpindahan ini pada peringkat awalnya diuruskan oleh pihak
G Jabatan Pengairan dan Saliran (JPS) Negeri Perlis.

3. Walau bagaimanapun pemilihan dan penempatan peserta-peserta projek FELCRA Berhad Lubuk Sireh adalah dibawah bidang kuasa Kerajaan Negeri Perlis. Senarai nama-nama penduduk yang terlibat dengan penempatan ini telah diatur dan diakui oleh
H Jawatankuasa Rayuan Penempatan Semula Empangan Timah Tasoh yang dianggotai oleh:

i. YB. Ahli Majlis Mesyuarat Kerajaan – Pengerusi (AMMK) (Tanah, Perhutanan dan Alam Sekitar)

I ii. Pengarah Tanah dan Galian Negeri Perlis

iii. Pengarah Jabatan Pengairan dan Saliran Negeri Perlis

iv. Pengarah IADP Negeri Perlis

v. Pengarah Jabatan Penilaian

vi. Pengarah FELCRA Negeri Kedah/Perlis

vii. Penghulu Mukim Beseri/Titi Tinggi

viii. YB. ADUN Beseri

4. Oleh kerana segala keputusan dari segi pemilikan lot tapak rumah dan ladang di dalam bidang kuasa Kerajaan Negeri, maka FELCRA Berhad perlu akur dalam apa jua keputusan yang akan ditentukan.

5. Diharapkan pihak tuan memahami perkara ini dan dapat menyampaikannya kepada peserta-peserta lain yang berkaitan demi mengelakkan kekeliruan tentang peranan FELCRA Berhad sebagai Agensi Pembangunan Tanah.

Sekian, terima kasih.

"MAJU BERSAMA FELCRA BERHAD DI ALAF BARU"

Yang benar,
Sgd. (Illegible)
(HAJI ASHAARI BIN HAJI YUSOF)
Pengurus Besar Kumpulan
Pembangunan Desa dan Ladang
b.p Ketua Eksekutif
FELCRA Berhad.

s.k
Pengurus Besar Wilayah Utara
Pengurus Kawasan FB. Lubuk Sireh.

(c) Of pertinence would be this. That Felcra did not plead the so-called "wrong assumptions" in its statement of defence. Mohamed Azmi SCJ delivering the judgment of the Supreme Court in *Muniandy & Anor v. Muhd Abdul Kader Muhd Saheed & Ors* [1989] 2 CLJ 577; [1989] 1 CLJ (Rep) 116 aptly said:

> Unless the objection raised is merely technical, the importance of pleadings can be found in many authorities. The most instructive is perhaps by Lord Diplock in *Hadmor Productions v. Hamilton* [1983] 1 AC 191 at p 233:
>
> > Under our adversary system of procedure, for a judge to disregard the rule by which counsels are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice, the

A right of each to be informed of any perel adverse to him that is going to be relied upon by the judge, and to be given the opportunity of stating what his answer to it is …

As to what is a technical ground in an objection to defective pleading can be illustrated from the judgment of Clerk Thomson LJ in *Burns v. Devon's Iron Works Ltd* [1961] SC 102 at pp 107 to 108:

B

> The court is often charitable to records, and is slow to overturn verdicts on technical grounds. But when a pursuer fails completely to substantiate the only grounds of faults averred and seeks to justify his verdict on a ground which is not just a variation, modification or development of what is averred (ie pleaded), but is something which is new, separate and distinct, we are not in a realm of technicality.

C

D Again, the Supreme Court in the case of *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330, said the same thing when Gunn Chit Tuan SCJ, delivering the judgment of the court, made the following observations:

E The learned judge had therefore erred in holding that there was a new substituted contract, and reference was made to *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42 in which Sharma J (as he then was) had made observations on the function of pleadings and the duty of course to follow rules of procedure and practice. We agreed with the following passage in the judgment of the learned

F judge in that case in which his Lordship stated:

> The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise

G the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should

H be confined to the pleas on which the parties are at variance.

Counsel also referred to *Wisma Punca Emas Sdn Bhd v. Dr Donal R O'Holohan* [1987] 1 MLJ 393 at p 395 in which case this court had also referred to *Janagi v. Ong Boon Kiat* [1971] 2 MLJ 196

I and considered that Sharma J had rightly held that the trial of a suit should be confined to the pleas on which the parties are at variance.

Applying these two authorities to the present appeal at hand, Felcra must be barred from raising the defence of the so-called "wrong assumptions". The nineteen (19) paragraphs of Felcra's statement of defence as seen at pp. 91 to 95 of RRJ1 failed to raise the defence of the so-called "wrong assumptions". The courts are certainly bound by the pleadings in the same way as the parties themselves (*Wong See Leng v. C. Saraswathy Ammal* [1954] 1 LNS 133; *The Chartered Bank v. Yong Chan* [1974] 1 LNS 178; *Development & Commercial Bank Bhd v. Abdullah bin Ismail & Anor* [1989] 1 CLJ 190; [1989] 1 CLJ (Rep) 467); *Lee Ah Chor v. Southern Bank Bhd* [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239; *Asia Hotel Sdn Bhd v. Malayan Insurance (M) Sdn Bhd* [1992] 2 CLJ 1185; [1992] 2 CLJ (Rep) 121; *Rosita bt Baharom & Anor v. Sabedin Salleh* [1993] 2 CLJ 300; *Yap Nyo Nyok v. Bath Pharmacy Sdn Bhd* [1993] 3 CLJ 188; *Mathavan Shunmugam v. Woo Bee Leng* [1995] 2 CLJ 957; *Metroplex Development Sdn Bhd v. Mohd Mastana Makaddas & Anor* [1995] 3 CLJ 70; and *Saw Seng Kee v. Nadzri & Ng Securities Sdn Bhd* [1997] 2 CLJ 425, CA).

(d) Ku Muhammad Rodzi bin Ku Mat Esa (SD5), a witness for the respondents, has absolutely no personal knowledge of the relevant matters germane to the occasion at hand. He was not attached to nor was he involved in Felcra at Lubuk Sireh or in the State of Perlis. He joined the Felcra office at Alor Star and not in Kangar and that was in 1996. I must categorically say that he had nothing to do with Felcra Lubuk Sireh. Consequently, he was not involved in preparing the relevant Felcra reports like exhs. (P1), (P28) and (P29). It must be borne in mind that the 393 participants were re-settled in Felcra Lubuk Sireh by 1994 and that was before Ku Muhammad Rodzi bin Ku Mat Esa (SD5) joined Felcra at Alor Star (see the examination-in-chief of (SD5) at p. 236 of RRJ1 and the cross-examination of (SD5) at p. 248 of RRJ1).

(e) In sharp contrast would be the evidence of Abd Hamid bin Ahmad (SP3) who was the Pengurus Felcra Lubuk Sireh at all material times. He certainly had full personal knowledge of all the relevant matters and he was also involved in the preparation of the relevant Felcra reports and documents namely, exhs. (P1), (P3), (P9), (P10) and (P24). His evidence incriminated Felcra and it did not show that there was any "wrong assumptions" whatsoever on the part of Felcra. Now, in regard to the issue of "wrong assumptions" that was raised by Felcra, that issue was not at all

put to the appellants' witnesses especially Abd Hamid bin Ahmad (SP3). That being the case, the respondents cannot rely on it as a defence. The law on this point has been lucidly canvassed by Gopal Sri Ram JCA in *Aik Ming (M) Sdn Bhd & Ors v. Chang Ching Chuen & Ors & Another Case* [1995] 3 CLJ 639 at p. 658 and there his Lordship aptly said:

> It is essential that a party's case be expressly put to his opponent's material witnesses when they are under cross-examination. A failure in this respect may be treated as an abandonment of the pleaded case and if a party, in the absence of valid reasons, refrains from doing so, then he may be barred from raising it in argument. It is quite wrong to think that this rule is confined to the trial of criminal causes. It applies with equal force in the trial of civil causes as well.

Again, in *Sivalingam Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545 at p. 551, writing a joint judgment both Gopal Sri Ram and Mahadev Shankar JJCA succinctly said:

> The main thrust of the defendants' case was that the plaintiff had requested the first respondent's permission to climb the tree which the first respondent refused. The plaintiff's case, on the other hand, was that he had been instructed by the first defendant to make the climb. But nowhere in the defence was it alleged that there was such a request as alleged in the evidence. Further and more importantly, it was never put to the plaintiff under cross-examination that such a request had come from him. The trial judge ought to have taken this failure into account when he came to assess the evidence. But nowhere in his judgment is there any indication that he did so.

Cross-examination is an art of advocacy. It is to weaken, qualify or destroy the case of the opponent. It is also meant to establish the party's own case by means of his opponent's witnesses. It is not confined to matters proved during examination-in-chief. A reasonable lawyer would, upon the slightest direct examination even if it is for formal proof, open up the whole case for the cross-examiner to cross examine (*Berwick v. Murray* [1850] 19 LJ Ch 281 at 286; *Morgan v. Brydge*s [1818] 2 Stark. R. 314; and *R. v. Murphy* [1841] 1 Arm. & O. 206). It is a correct assertion to say and I so say that every witness is compellable to answer every question put to him in cross-examination provided the question is relevant to the issue at hand. But, like all general rules, there are exceptions to it. Thus, if the answer to the question is protected by public policy (*R. v. Chief Constable for West Midlands,*

ex p. Wiley [1995] 1 AC 274), or privilege (*Greenhough v. Gaskell* 1 M. & K. 115, per Lord Brougham; and *Hennessy v. Wright* 21 QBD 509, per Wills J), or unless the case falls under the category where oral evidence is excluded by documentary evidence (*Hutton v. Watling* [1948] Ch. 398), then the court will not permit the cross-examiner to cross-examine on that point. The court too will not permit cross-examination for the purpose of oppression and not for the purpose of justice. When cross-examination is conducted without restraint and without the courtesy and consideration which a witness is entitled to expect in a court of law, then such cross-examination would become indefensible (*R. v. Flynn* [1972] Crim. LR 428). As a rule, a party should put to each of his opponent's witnesses so much of his own case as concerns that particular witness. If he asks no questions, he will generally be taken to accept the witness's account (*R. v. Hart* [1932] 23 Cr. App. R 202) and he will not be permitted to launch an attack in his final address to the court and neither will he be allowed to put forward explanations where he has failed to cross-examine relevant witnesses on this point. A classic example would be the case of *R. v. Bircham* [1972] Crim. LR 430 where the defending counsel was stopped in his closing address when he made a suggestion that a co-defendant and a prosecution witness were the perpetrators of the crime. And the Court of Appeal upheld the judge's decision on appeal.

(f) It is pertinent to mention that the cross-examination of the appellant's witnesses by the learned counsel for Felcra showed that Felcra did not suffer from any "wrong assumptions" as alleged but, in actual fact, merely followed the directions of the State Government of Perlis. I shall demonstrate by referring to the evidence of Mohamad Razi bin Mustaffa (SP1). At pp. 139 to 140 of RRJ1, (SP1) was asked under cross-examination by Felcra:

Put : Kerajaan yang beri janji berkaitan lot kediaman, pampasan dan menjadikan awak peserta Felcra?

J : Setuju.

I will now refer to the evidence of Abd Hamid bin Ahmad (SP3) where under cross-examination by Felcra, (SP3) had this to say (see pp. 172 to 173 of RRJ1):

(P9 dirujuk).

Put : Kerajaan Negeri yang buat keputusan tentang siapa yang menjadi peserta.

J : Ya.

Put : Surat ini setakat memaklumkan hal itu.

J : Ya.

(P1 dirujuk).

(Muka surat 150 Ikatan A).

Put : Peranan Felcra ini timbul selepas Kerajaan Negeri membuat keputusan tentang peserta.

J : Setuju.

(Muka surat 148 Ikatan A – Para 7.1).

Ia diiktiraf oleh Kerajaan Negeri.

(Muka surat 4 Ikatan A – P3).

Kerajaan Negeri Perlis yang membuat keputusan untuk menambahkan jumlah peserta. Felcra tidak terlibat. Jika Kerajaan Negeri buat keputusan itu Felcra tidak boleh enggan mematuhi arahan itu.

[111] All these pieces of evidence meant that Felcra did not on its own accord choose or determine the participants at the Felcra scheme at Lubuk Sireh. Felcra merely acted on the first and the second respondents' instructions. The inevitable conclusion would be that the names of the persons listed as "peserta-peserta rancangan Felcra Lubuk Sireh" in the various Felcra reports and documents prior to the issuance of exhs. (D43)/(D47) and (D44)/(D46) were based entirely on what the first and the second respondents had notified or instructed or informed Felcra.

[112] Sieving through the evidence, I have this to say. That both the first and the second respondents have not adduced any evidence to show that the appellants' earlier recognition as Felcra participants and the first respondent's earlier decisions were temporary and not final and were subject to the interviews. With respect, the respondents have not adduced a single document to show that their earlier decisions and/or actions were subject to the interview processes.

[113] In regard to the issue pertaining to the size of the land to be given to the participants, I have this to say. The evidence showed that once a settler was accepted as a participant of the Felcra scheme at Lubuk Sireh, the issue of how much land was to be allotted for his share in the scheme was to be resolved or decided later. In 1990, the participants who attended the Felcra

orientation course were briefed on the "sistem saham Felcra". The issue of the "jumlah saham" was to be determined later (see the cross-examination of Ahmad bin Suboh (SP4) at pp. 186 and 190 of RRJ1). Dato' Yaziz @ Yazid bin Mat (SD2) under cross-examination at p. 213 of RRJ1 explained it lucidly in this way:

(Muka surat 61 Ikatan A).

S : Selepas penduduk di tempatkan di Lubuk Sireh mereka menjadi peserta Rancangan Felcra Lubuk Sireh dan isu berapa saham peserta akan dapat akan diputuskan kemudian?

J : Setuju.

[114] Now, all these would be consistent with the contents of exh. (D45). The learned judge of the High Court completely ignored the significance of exh. (D45) which has already been reproduced earlier. From exh. (D45), it is beyond per adventure that the interviews had nothing to do with determining or finalising the participants for the Felcra scheme at Lubuk Sireh. Both the first and the second respondents had already recognised 393 Felcra participants. The interviews were solely to find out from the 393 participants about the size of the land that they expected to get and their willingness to repay the development costs within a shorter period of time. Exhibit (D45) is certainly consistent with exh. (P29). Both these two exhibits confirmed that all those re-settled had already been recognised as Felcra participants.

[115] Exhibit (D48) as seen at pp. 637 to 656 of RRJ1 showed that the actual interviews that were conducted were confined to two focal points, namely, the amount of the land expected and the shortening of the development costs of the repayment period. The appellants also gave evidence to the same effect as seen in the testimonies of Mohamad Razi bin Mustaffa (SP1) in examination-in-chief at p. 133 of RRJ1 and during cross-examination at pp. 137 to 138 of RRJ1, as well as that of Yaakob bin Shafie (SP2) in examination-in-chief at pp. 150 to 151 of RRJ1, and that of Ahmad bin Suboh (SP4) in examination-in-chief at p. 181 of RRJ1. I must reiterate that the interviews had nothing to do with determining or finalising the Felcra Lubuk Sireh participants. Incidentally, there was absolutely no evidence to show how the interviews were relevant in determining or finalising the participants of the Felcra Lubuk Sireh scheme.

[116] It cannot be disputed that the land at Lubuk Sireh belonged to the State Government of Perlis (second respondent). It used to be State land. It is also undisputed that the State Government of Perlis (second respondent) permitted Felcra to develop the State land there as a group settlement area pursuant to s. 34 of the Land (Group Settlement Areas) Act 1960 (Act 530). Certainly there is a statutory agency between Felcra and the State Government of Perlis (second respondent) at the "rancangan Felcra Lubuk Sireh". The State Government of Perlis (second respondent) is bound by Felcra's actions and conduct at the Felcra Lubuk Sireh scheme. And based on the State Government of Perlis's (second respondent's) instructions, directions, decisions and/or actions, Felcra recognised and accepted the appellants as Felcra participants. It must be borne in mind that Felcra did not make any decision on its own accord. Felcra could not have acted on its own accord. Before 1999, the State Government of Perlis (second respondent) by its conduct, actions and decisions had already recognised the appellants as Felcra participants in the scheme at Lubuk Sireh. Exhibit (D45) favoured the appellants. But exhs. (D43) (at p. 617 of RRJ3), (D47) (at p. 636 of RRJ3) and (P22) (at p. 414 of RRJ2) are one and the same thing and they showed that the State Government of Perlis (second respondent) was reversing its earlier decisions where the appellants were already accepted as Felcra participants in the Lubuk Sireh scheme. The State Government of Perlis (second respondent) by its decisions in exhs. (D43), (D47) and (P22) had terminated, cancelled, forfeited and/or revoked the appellants' participation as participants in the Felcra Lubuk Sireh scheme. The appellants argued that the actions and/or decisions of the State Government of Perlis (second respondent) were unjustified, unreasonable, taken in bad faith, irrational and done arbitrarily. The appellants also argued that the State Government of Perlis (second respondent) had not given any valid reasons and/or justifications for its decisions and/or actions. The appellants even ventured to argue that the decisions of the State Government of Perlis (second respondent) as reflected in exhs. (D43), (D47), (P22), (D44) and (D46) were invalid and of no legal effect.

[117] The available evidence showed that the appellants were not told verbally as to why they ceased to be members of the co-operative society and ultimately their participation as participants in the Felcra Lubuk Sireh scheme were revoked and cancelled. In his examination-in-chief, Yaakob bin Shafie (SP2) testified as follows (see p. 151 of RRJ1):

> Pada bila-bila masa saya tidak diberitahu kenapa nama saya dikeluarkan dari senarai pertama dan tidak dimasukkan ke dalam senarai kedua.

[118] Ahmad bin Suboh (SP4), in his examination-in-chief, testified in the same manner at p. 185 of RRJ1:

> Saya tidak ada diberitahu kenapa nama saya tiada dalam senarai ini.

[119] In order to satisfy themselves as to why they ceased to be members of the co-operative society and, consequently, ousted as participants of the Felcra Lubuk Sireh scheme, both Yaakob bin Shafie (SP2) and Ahmad bin Suboh (SP4) went to see the Menteri Besar of Perlis. This was what they said. At pp. 151 to 152 of RRJ1, Yaakob bin Shafie (SP2) testified under examination-in-chief in this manner:

> Selepas mendapat tahu saya tidak lagi menjadi peserta Felcra saya ada berjumpa dengan Menteri Besar, Dato' Seri Shahidan Kassim. Kalau tak silap pada 10.2.2000 di pejabatnya. Selain saya Ahmad bin Suboh, Abdullah, Yahya Jusoh, Tuan Haji Syed Ibrahim Syed Darus pergi berjumpa beliau. Saya tanya kenapa saya tak dapat pegangan saham ladang dan dia jawab saya bercerai dan saya tanya saya bercerai apa tetapi dia tak jawab. Selepas itu saya tidak berjumpa dengannya lagi.

[120] And at p. 185 of RRJ1, Ahmad bin Suboh (SP4) testified in examination-in-chief to the following effect:

> Selain berjumpa Felcra saya ada berjumpa dengan YAB Menteri Besar selepas saya diberhentikan. Kami pergi 5 orang. Tujuan adalah hendak tanya kenapa kami diberhentikan. Dari segi perbincangan saya berpendapat ia berbau politik, jadi saya pun balik.

[121] And that was the evidence that confronted the learned judge of the High Court. The same evidence now staring before us in cold print.

[122] The Federal Court in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 CLJ 65, speaking through Edgar Joseph Jr FCJ made reference to a textbook in an attempt to show how a power may be unreasonably exercised or abused. There, at pp. 112-113 of the report, his Lordship had this to say:

A At para 13-086 of de Smith (5th Ed) there is, if we may say so, a most helpful summary of the three distinct ways in which power may be unreasonably exercised or abused:

(a) Where there is a defect in the decision-making process – in the way the decision was reached or the factors taken into account in reaching the decision. These include:

B

(i) decisions taken in bad faith;

(ii) irrational decisions – those which are arbitrary, or inadequately justified or reasoned;

C

(iii) decisions where relevant considerations are manifestly inappropriately balanced.

(b) Where there is an infringement of principles governing the exercise of power in a constitutional democracy. These include:

D

(i) the principle of legal certainty (which requires the fulfillment of legitimate expectations);

(ii) the principle of equality (which requires decisions to be consistently applied and prohibits the making of unjustifiable distinctions between individuals).

E

(c) Where the impact of the decision is oppressive or an unnecessarily onerous infringement of a person's rights or interests.

F

[123] Gopal Sri Ram JCA delivering the majority judgment in *Lam Eng Rubber Factory (M) Sdn Bhd v. Pengarah Alam Sekitar, Negeri Kedah dan Perlis & Anor* [2005] 2 CLJ 157 at p. 163 had this to say about the way a discretionary power has to be exercised generally:

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> Of course, Parliament has conferred upon the first respondent the power or, to use a more well worn expression, the discretion to decide whether to issue the licence or not. But the law requires him to exercise this power or discretion fairly, justly and without misdirecting himself on the law or the facts. As Salleh Abas said in *Savrimuthu v. Public Prosecutor* [1987] 2 MLJ 173:

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> > Public interest, reason and sense of justice demand that any statutory power must be exercised reasonably and with due consideration.

I

The same principle was laid down in slightly different language by Lord Denning MR in *Laker Airways Ltd v. Department of Trade* [1977] QB 643. There are two passages in the judgment of the Master of the Rolls that merit reproduction. This is what he said in the first:

> The underlying principle is that the Crown cannot be estopped from exercising its powers, whether given in a statute or by common law, when it is doing so in the proper exercise of its duty to act for the public good, even though this may work some injustice or unfairness to a private individual: see *Maritime Electric Co Ltd v. General Dairies Ltd* [1937] AC 610 where the Privy Council, unfortunately, I think, reversed the *Supreme Court of Canada* [1935] SCR 519. It can, however, be estopped when it is not properly exercising its powers, but is misusing them; and it does misuse them if it exercises them in circumstances which work injustice or unfairness to the individual without any countervailing benefit for the public: see *Robertson v. Minister of Pensions* [1949] 1 KB 227, *Re Liverpool Taxi Owners' Association* [1972] 2 QB 299, *HTV Ltd v. Price Commission* [1976] ICR 170.

And this is what he said in the second:

> The two outstanding cases are *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] AC 997, and *Secretary of State for Education and Science v. Metropolitan Borough of Tameside* [1976] 3 All ER 769, where the House of Lords have shown that when discretionary powers are entrusted to the executive by statute, the courts can examine the exercise of those powers, so as to see that they are used properly, and not improperly or mistakenly. By mistakenly, I mean under the influence of a misdirection in fact or in law.

The judgment of Lord Denning MR in *Laker Airways Ltd v. Department of Trade* [1977] QB 643 has been referred to and applied by our Federal Court. See *Malayan Banking Bhd v. Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204; *Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia* [1999] 2 MLJ 337.

[124] The *Wednesbury* principles of unreasonableness were discussed at length by Jemuri Serjan CJ (Borneo) in *Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333 and I need not dwell on it anymore because I have alluded to it in the early part of this judgment. Having

A scrutinised the evidence produced in cold print and after separating the chaff from the grain and sifting out the truth from falsehood, I have this to say. The appellants relied on the representations and promises advanced by the State Government of Perlis (the second respondent) and re–settled at Lubuk Sireh.
B For 13 long years, the appellants were recognised and accepted and enjoyed the benefits of being the participants of the Felcra Lubuk Sireh scheme. The State Government of Perlis (the second respondent) cannot plead ignorance. The evidence showed that the State Government of Perlis (the second respondent) knew
C that the appellants were already participants at Felcra Lubuk Sireh scheme. It must be recalled that both Felcra and the State Government of Perlis (the second respondent) were active partners at the "rancangan Felcra Lubuk Sireh". It must also be recalled that at Felcra Lubuk Sireh, the State Government of Perlis (the
D second respondent) acted through Felcra. Interestingly, the State Government of Perlis (the second respondent) even gave, in early 1994, one of the appellants a prestigious award known as the "Peneroka Jaya (Felcra)" (see p. 590 of RRJ2).

E **[125]** I must categorically say that the State Government of Perlis's (the second respondent's) decisions as reflected in exhs. (D43)/(D47) and (D44)/(D46) were totally irrational and cannot be justified nor accepted. It was a display of irrationality and arbitrariness at its best and it was compounded by the fact that
F the decisions in regard to the 268 participants in exhs. (D44)/(D46) were reduced to 259 participants as reflected in exhs. (D43)/(D47) without assigning any reasons nor justifications nor explanations whatsoever.

G **[126]** All the decisions of the State Government of Perlis (the second respondent) were conveyed to the participants through Felcra. There was thus an implied or an express statutory agency between both of them. In law, the acts, contracts and representations of the agent must bind the principal. Here, the
H principal would be the State Government of Perlis (the second respondent) while the agent would be Felcra – the third respondent. An agency is in the nature of a fiduciary relationship between two persons or parties, one of whom expressly or impliedly consents that the other should act on his behalf so that
I it will affect his relations with third parties. Being authorised, the agent is said to have the authority to act and it is this authority that gives the power to affect the principal's legal relations with

third parties. Here, the third parties would be the appellants. According to Diplock LJ in *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480, 502:

> An actual authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties.

[127] The court in *Branwhite v. Worcester Works Finance Ltd.* [1969] 1 AC 552, 587 said that:

> While agency must ultimately derive from consent, the consent need not necessarily be to the relationship of principal and agent itself (indeed the existence of it may be denied) but it may be to a state of fact upon which the law imposes the consequences which result from agency.

[128] The agent's consent is certainly required (*Garnac Grain Co. Inc. v. H.M.F. Faure and Fairclough Ltd* [1968] AC 1130, 1137). There must be mutual consent between the principal and the agent because that mutual consent will give rise to a contract which would in turn render the agent liable for non-performance of what he has undertaken to do. In a situation where the principal confers authority on the agent to act and the agent acts on the principal's behalf, the agent is not permitted to deny that it was on the principal's behalf that he had acted (*Roberts v. Ogilby* [1821] 9 Price 269; and *Moore v. Peachey* [1891] 7 TLR 748).

[129] It is said that, "The essential characteristic of an agent is that he is invested with a legal power to alter his principal's legal relations with third parties; the principal is under a correlative liability to have his legal relations altered" (*Dowrick* 17 MLR 36; and *Reynold*s 94 LQR 225). No formality is required to appoint an agent. Indeed, Gopal Sri Ram JCA, delivering the judgment of the Court of Appeal in *KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd* [1996] 2 CLJ 611 at 616, aptly said as follows:

> Further, Part X of the Contracts Act 1950, which contains the relevant provisions on agency does not contain any requirement that the appointment of an agent or sub-agent has to be in writing or be evidenced in writing. Hence the appointment may be express or implied, that is to say, it may be gathered from the facts and circumstances of a case and from the conduct of the parties.

[130] In reality, an agent may be appointed orally. Such an appointment is considered good and effective (*Liu Wing Ngai t/a Kam Wah Ultrasonic Engineering Co. v. Lui Kok Wai t/a Almac Machinery* [1997] 1 SLR 559; and *Heard v. Pilley* [1869] 4 Ch App 548).

[131] So much for the law on agency. Here, Felcra must act according to the provisions of the Felcra Act and the Land (Group Settlement Areas) Act 1960 (Act 530). Felcra had exercised its own statutory powers under s. 35 of the Land (Group Settlement Areas) Act 1960 (Act 530) when it permitted the State land at Lubuk Sireh to be developed as a co-operative group settlement area. It must be recalled that Felcra established the co-operative society wherein all the appellants were recognised as members until their memberships were abruptly terminated. As a statutory body, Felcra must ensure that it would not be made use of as a tool by others. Towards this end, Felcra failed miserably. By way of exh. (D45), Felcra was instructed to send letters to 393 participants to inform them that the first respondent had "meluluskan secara dasar pemberian pegangan saham ladang kepada 393 orang peserta Felcra Lubuk Sireh pada kadar keluasan yang akan ditentukan." Sad to say Felcra did not send the letters to the 393 participants. It can be surmised that by way of exh. (D45), Felcra knew that the 393 participants had already been chosen and these 393 participants were in principle entitled to land share holdings. Felcra had a statutory duty to enforce the directions and decisions as reflected in exh. (D45) but Felcra, as an agent of the State Government of Perlis (the second respondent), failed to discharge its legal and social obligations under the Felcra Act. By way of an analogy, reference should be made to the case of *Lembaga Kemajuan Tanah Persekutuan v. Mariam Mangu & Ors.* [1984] 1 CLJ 225; [1984] 1 CLJ (Rep) 197, a decision of the then Federal Court. There, Salleh Abas CJ (Malaya) (as he then was) delivered the judgment of the then Federal Court and his Lordship had this to say at p. 201 of the report:

> Can Felda now turn round and say it was not liable to the injured occupant because it did not build the kongsi-house? In our view, it cannot. Although Felda did not build it, it allowed it to be erected and used by the weeding labourers, whose work benefitted Felda, and although it had control and supervision of the Scheme and the well-being of the labourers, Felda did nothing to ensure that the kongsi-house was safe for them to live in. It only allowed

> it to exist and be used. We cannot accept this indifferent attitude as absolving Felda of its duty of care, especially when it is a statutory authority established by the legislature entrusted with social and economic responsibilities. In the discharge of these responsibilities Felda must be fully alive to the object and purpose for which it was established. In this case whilst it correctly retained control and supervision of the Scheme and the general well-being of the labourers, it did nothing to ensure compliance of the obligations undertaken by the contractor. In our view, this is not enough. It must go further and see that they are complied with.

[132] The right of hearing was not accorded to the appellants before the first respondent decided to issue exhs. (P21), (D44), (D46), (P22), (D43) and (D47) notwithstanding the fact that the appellants were all along recognised, accepted and treated as Felcra participants. It must be recalled that the appellants had received dividends from the profits from the Felcra Lubuk Sireh scheme and they were also members of the co-operative society. The appellants too were actively involved in all aspects of the "rancangan Felcra Lubuk Sireh". They were all active participants and they expected to be treated fairly and reasonably. Paragraph 13(d) (viii) of the statement of claim averred categorically that the first respondent's decisions were made in breach of the rules of natural justice. Paragraph 13(d) (ix) of the statement of claim also averred that the first respondent's decisions were grossly unreasonable and unfair.

[133] The principles of natural justice imposed by the courts may conveniently be grouped into two categories. The first would be the *audi alteram partem* (hear both sides). The second is *nemo judex in causa sua* (there should be an absence of bias with no person being a judge in their own cause). These two latin maxims are frequently used and they signify the standards to be used in the decision-making process. Simply put, it seeks to ensure that an individual would be accorded an opportunity to present his side of the case prior to the decision being made. Of utmost importance, the decision must be reached in an objective manner and carried out by an independent and impartial decision-maker. Over the years, the courts have used such terms as "fairness" or a "duty to act fairly". These terms are sufficiently wide to embrace all manner of decisions-be it judicial or administrative. No matter how wide the powers of the State Government of Perlis (the

second respondent) may be and how extensive the discretion which they have, it is prudent to require them to exercise their wide ranging powers in a manner that is procedurally fair. As governmental powers grow by leaps and bounds, there is an urgent need to apply a certain measure of procedural fairness so that it will be tolerable. Jackson J, a judge of the United States Supreme Court aptly said in *Shaughnessy v. United States*, 345 US 206 (1953) that, "Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied." And Frankfurter J, in *McNabb v. United States*, 318 US 332 (1943), succinctly said, "The history of liberty has largely been the history of the observance of procedural safeguards." The rules of natural justice play a prominent role in Britain as it is in Malaysia. It is equivalent to the "due process of law" as set out in the Constitution of the United States. Abdoolcader SCJ, delivering the judgment of the Supreme Court in *John Peter Berthelsen v. Director-General Of Immigration, Malaysia & Ors.* [1986] 2 CLJ 409; [1986] CLJ (Rep) 160, vigorously applied the rules of natural justice in favour of the appellant there. This was what his Lordship said at pp. 166-167 of the report:

> In the light of the authorities we have adumbrated, we regard the appellant as so circumstanced in relation to the action of the first respondent as to be entitled to the observance of the rules of natural justice. Whatever the grounds be upon which the first respondent was proceeding, the appellant might, in addition to attacking those grounds, also desire to refer to any matters of special hardship which the cancellation of his employment pass would impose upon him and he should have been invited to do so. If, having done all this, the first respondent then gives consideration to the appellant's representations, the requirements of natural justice will have been satisfied and it would be for the first respondent to make his decision whether or not to cancel the employment pass in the exercise of the discretion conferred upon him by reg. 19 of the Regulations.

[134] According to Harman LJ in *Ridge v. Baldwin* [1963] 1 QB 539 at p. 578, administrative powers which affect rights must be exercised in accordance with natural justice. It is a classic authority and I must set out the facts briefly. The chief constable of Brighton had been tried and acquitted on a criminal charge of conspiracy to obstruct the course of justice. Two other police officers were convicted, and the judge twice took opportunities to

comment adversely on the chief constable's leadership of the force. Thereupon the Brighton Watch Committee, without giving any notice or offering any hearing to the chief constable, unanimously dismissed him from office. His solicitor then applied for a hearing and was allowed to appear before a later meeting. The Committee confirmed their previous decision by a vote of nine against three. The chief constable exercised his right of appeal to the Home Secretary, but his appeal was dismissed. Finally, he turned to the courts of law and sought for a declaration that his dismissal was void because he had not been given any notice of any charge against him and no opportunity of making his defence. This was refused by the High Court. It was also refused unanimously by the Court of Appeal. But the House of Lords by a majority of four to one allowed it.

[135] The decision of the House of Lords in *Ridge v. Baldwin* [1964] AC 40, marked a turning point of the change in the judicial policy. The House of Lords restored the principles of natural justice and applied it on a wider basis. Lord Esher MR in *Voinet v. Barrett* [1885] 55 LJ QB 39 at 41, described natural justice to mean "the natural sense of what is right and wrong." And Lord Mansfield eloquently described it as "natural justice and equity" in *Moses v. Macferlan* [1760] 2 Burr. 1005 at 1012. It is ideal to remember that the power to act accorded to a public authority "as he thinks fit" does not allow that public authority to act unreasonably or in bad faith and that public authority must always take into consideration the elementary doctrines of fair procedure. Lord Selborne in *Spackman v. Plumstead District Board of Works* [1885] 10 App. Cas. 229 at 240 said that, "There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

[136] According to the Privy Council in the case of *A.G. v. Ryan* [1980] AC 718 that "it has long been settled law" that a decision which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority. And Lord Russell in strong words said in *Fairmount Investments Ltd. v. Secretary of State For the Environment* [1976] 1 WLR 1255 at 1263 that, "it is to be implied, unless the contrary appears, that Parliament does not authorise by the Act the exercise of powers in breach of the principles of natural justice, and that Parliament does by the Act require, in the particular procedures, compliance with those principles." Lord Reid, in style, said in *Ridge v. Baldwin* [1964] AC 40, at p. 80 that:

A … a decision given without regard to the principles of natural justice is void.

[137] Bluntly put, a violation of natural justice makes the decision void just like in any other case of *ultra vires*. It must be emphasised that the rules of natural justice operate in this way. That the non-observance would invalidate the exercise of the power.

[138] As promised, I now revert back to the doctrine of legitimate expectation. This doctrine is often used in the field of public law. If used wisely, this doctrine serves as an effective weapon in challenging decisions of public bodies. If a decision is adverse to the person affected, it must follow a procedure that is fair. It must be emphasised that the right to be heard does not depend on any promise or practice of a hearing by the body taking the adverse decision. The right to be heard is an age-old principle of natural justice. A legitimate expectation of being heard is created by a promise or practice of being heard (*Attorney-General of Hong Kong v. Ng Yuen Shiu (supra)*; and *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374, HL). The right to substantive fairness is usually generated by a representation.

[139] The following principles of law must be advanced:

(a) There should be such unfairness as to amount to an abuse of power. If a statement has created a legitimate expectation that a certain decision will be taken or that decision will be taken on the assumption that a certain fact is true, it will often be unfair and an abuse of power to resile from it. The court will act and will impose the requirement of fairness on the public body concerned.

(b) The requirements giving rise to a legitimate expectation must be present. These requirements are similar to the requirements of estoppel in private law (per Bingham J, in *R v. Inland Revenue Commissioners, ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545 at 1569H to 1570B; per Stuart-Smith LJ, in *R v. Jockey Club, ex p RAM Racecourses Ltd* [1993] 2 All ER 225 at 236h-237b; and per Hidden J, in *R v. Inland Revenue & Commissioners, ex p SG Warburg & Co Ltd* [1994] STC 518 at 535 c to j and 541j to 542a). The requirements are – that the body concerned made a representation which was clear, unambiguous and devoid of qualification; that the

applicant was within the category of people to whom it was made and that it was reasonable for him or her to rely on the representation and that the representee relied on such representation to his or her detriment.

(c) Whether the representation can generate a legitimate expectation is also important. Only those people who have the authority, either actual or ostensible, in accordance to the law of agency can make such representations (Craig, *Administrative Law*, 2nd edn, 1989 at pp. 471 to 473). The courts have been very flexible and hold onto the views that if the person acted reasonably by relying on the representation because the representor was senior enough and came into contact with the public and the representor make such representations, that is said to be sufficient to trigger the legitimate expectation of the person concerned (per Denning MR in *Lever Finance v. Westminster (City) LBC* [1971] 1 QB 222 at 230D to E).

(d) It is for the court to decide whether there is an overriding reason for frustrating the legitimate expectation. In doing so, the court must always put to the forefront the question of fairness.

[140] Having said all that, I must categorically say that there is considerable justification for invoking the doctrine of legitimate expectation in favour of the appellants, and I so hold accordingly. The learned judge of the High Court fleetingly considered the doctrine of legitimate expectation at p. 48 of RRJ1 and dismissed it by saying that the "wrong assumptions" on the part of the appellants and Felcra cannot be used to trigger the doctrine of legitimate expectation (see p. 49 of RRJ1). It must be recalled that the appellants did not assume that they were accepted as participants in the Felcra Lubuk Sireh scheme. Exhibits (P1) at p. 269 of RRJ2 and (P28) at p. 536 of RRJ2 showed that, in fact, all those people (including the appellants) who were re-settled were recognised as "peserta rancangan". And it must also be recalled that the defence of "wrong assumptions" by Felcra was not even pleaded by Felcra in its statement of defence and, consequently, that defence must fail. I have demonstrated at great length in this judgment that in all the circumstances, I consider that this is an appropriate case where I must vigorously invoke the doctrine of legitimate expectation in favour of the appellants. I would allow the appellants appeal with costs here and below. The

A decision of the learned judge of the High Court is set aside. I too direct that the deposit lodged in court by way of security to be returned to the appellants to account of taxed costs. This meant that prayer (i) (as amended to ten relongs) and prayer (ii) of the statement of claim at p. 74 of RRJ1 are allowed. The learned
B senior assistant registrar of the High Court at Kangar, Perlis is to assess the damages in prayer (iv) of the statement of claim at p. 74 of RRJ1 with interest at 8% per annum with effect from the date of this judgment (31 January 2008) in accordance with and in amplification to prayer (vi) read with prayer (viii) of the
C statement of claim at p. 75 of RRJ1. No orders as to prayers (iii) on exemplary damages and (v) on specific performance of the statement of claim at pp. 74 and 75 of RRJ1 as they have been withdrawn by the appellants. This is a unanimous decision of this court.

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